(22,758 and 22,759.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 682.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI, APPELLANTS,

vs.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY.

No. 683.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, APPELLANT,

vs.

JOHN A. KNOTT, H. R. OGLESBY, AND FRANK A. WIGHTMAN, RAILROAD AND WAREHOUSE COMMISSIONERS, AND ELLIOTT W. MAJOR, ATTORNEY GENERAL OF THE STATE OF MISSOURI.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print
Citation to railway company	*a*	1
Citation to Knott *et al.*	*c*	1
Bill of complaint	2	2
Restraining order	13	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1911.

	Original.	Print
Order continuing restraining order	15	16
Appearances	19	18
Order of temporary injunction	20	19
Injunction bond	21	19
Demurrer of Knott *et al.*, railroad commissioners	23	20
Demurrer of Hadley, attorney general	26	22
Demurrer of Kemper Grain Company	29	23
Demurrer of Abernathy Furniture Company	31	24
Demurrer of Geo. W. Witter	33	25
Waiver of affidavits to demurrers	35	26
Order overruling demurrers	36	27
Joint answer of Knott, Rice, and Wightman, railroad commissioners	36	27
Answer of Herbert S. Hadley, attorney general	52	36
Joint and several answer of Abernathy Furniture Company *et al.*	67	44
Replication to answer of Knott *et al.*	72	48
Replication to answer of Herbert S. Hadley, attorney general	73	48
Replication to answer of Lenden K. Myers *et al.*	74	49
Motion of defendants for reference to master	75	50
Motion of complainants for oral hearing	76	50
Order of reference	79	53
Motion for leave to file amended and supplemental bill	80	54
Restraining order of June 13, 1907	81	55
Restraining order of June 14, 1907	83	56
Notice of motion for leave to file amended and supplemental bill	85	57
Order granting leave to file amended and supplemental bill	86	57
Amended and supplemental bill	88	58
Order granting leave to file amendment to bill	103	70
Amendment to bill of complaint	104	71
Acknowledgments of service of subpœna	113	77
Joint demurrer of Knott, Wightman, and Oglesby, railroad commissioners	115	79
Demurrer of Herbert S. Hadley, attorney general	120	82
Joint and several demurrer of Joseph M. Patterson *et al.*	125	85
Joint and several demurrer of D. J. Dean *et al.*	127	86
Joint and several demurrer of Abernathy Furniture Company *et al.*	129	87
Interlocutory report of master and order thereon	133	89
Order granting leave to amend amendment to bill of complaint	135	90
Order overruling demurrers	136	91
Joint answer of John A. Knott *et al.*	137	91
Answer of Herbert S. Hadley, attorney general	138	92
Replication to answer of Knott *et al.*	147	100
Replication to answer of H. S. Hadley, attorney general	148	101
Order as to hearing	149	102
Affidavit of T. F. Wharton	150	102
Exhibits A to J—Statements	152	104
Notice as to hearing	162	110
Return of special master	163	110
Orders as to hearing	164	111
Complainants' requests for findings of fact	177	122
Certificate of trial judge	227	158
Order of submission	233	163
Order substituting Elliott W. Major as attorney general in the stead of Herbert S. Hadley	234	163

	Original.	Print
Order as to statement of expert accountants	236	166
Statement of accountants	237	166
Order as to answers	242	172
Findings of fact	243	172
Decree	268	196
Motion to modify decree	272	199
Amended motion to modify decree	274	199
Notice of motion to modify	276	201
Amended decree	277	201
Declinations to join in appeal	283	205
Defendants' assignment of errors	287	209
Defendants' petition for appeal	296	217
Defendants' bond on appeal	297	218
Order granting appeal	300	219
Complainant's assignment of errors	301	221
Complainant's petition for cross-appeal	305	223
Bond on cross-appeal	306	223
Order granting cross-appeal	308	224
Order extending time to file transcript	309	225
Stipulation as to transcript	310	225
Remarks of McPherson, judge, filed June 14, 1907	312	227
Remarks of McPherson, judge, filed June 17, 1907	315	228
Remarks of McPherson, judge, filed June 17, 1907	323	234
Opinion of McPherson, judge, filed March 31, 1908	329	238
Opinion of McPherson, judge, filed March 8, 1909	338	244
Supplemental opinion of McPherson, judge, filed April 17, 1909	366	263
Certificate of clerk	371	266

a *Citation.*

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to The Kansas City Southern Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the Circuit Court of the United States for the Western Division of the Western District of Missouri, and filed in the clerk's office of said court on the 6th day of March, A. D. 1911, in a cause wherein John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, are appellants, and you are appellee, to show cause, if any, why the amended final decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this 6th day of March, A. D. 1911.

SMITH McPHERSON, *Judge.*

THE UNITED STATES OF AMERICA,
Western District of Missouri, ss:

I hereby acknowledge due service of the above citation this 6th day of March, A. D. 1911.

FRANK HAGERMAN,
Solicitor for Kansas City Southern Railway Company, Appellee.

b [Endorsed:] 2993. K. C. Southern Ry. Co. vs. John A. Knott, et al. Citation. Filed March 6, 1911. Adelaide Utter, Clerk.

c In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The President of the United States to all the defendants of record in above entitled case:

You are hereby cited and admonished to be and appear in the supreme court of the United States at the city of Washington,

District of Columbia, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court of the United States for the western division of the western district of Missouri, on March 6, 1911, as a cross appeal in a case where the Kansas City Southern Railway Company, is cross appellant and you are the cross appellees, and show cause, if any, why the amended final decree rendered against the said appellant as in the said appeal mentioned should not be granted, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Smith McPherson, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this March 6, 1911.

SMITH McPHERSON, *Judge.*

Due service of above citation accepted this March 6, 1911.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Ass't Att'y General, and
SANFORD B. LADD,
Solicitors for Appellees and Defendants in Said Cause.

d [Endorsed:] No. 2993. K. C. So. Ry. Co. v. Jno. A. Knott, et al. Citation. Filed Mar. 6, 1911. Adelaide Utter, Clerk.

1 UNITED STATES OF AMERICA, *set:*

Be it remembered, that heretofore, to-wit, on the 16th day of June, A. D. 1905, there was filed in the office of the clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, a bill of complaint wherein The Kansas City Southern Railway Company is complainant and John A. Knott, et al., are defendants.

Said Bill of Complaint is in words and figures as follows:

2 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company and George W. Witter, Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court Aforesaid:

Your orator, The Kansas City Southern Railway Company, is a this, its bill of complaint against each of the above named defendants, and thereupon avers:

I.

Your orator, The Kansas City Southern Railway Company, is a railroad corporation organized and existing under the laws of the state of Missouri with its chief office therein, and a citizen and resident thereof, being authorized to do business in the state of Missouri. It is, with its railroad, engaged in state and interstate commerce, ow-ing and operating lines of railway in Missouri and other states. Its line in Missouri extends from Kansas City, Jackson county, Missouri, in a southerly direction into and through the counties of Jackson, Cass, Bates, Vernon, and at a point in said county of Vernon said line passes into Crawford county, state of Kansas, passing through Pittsburg, and then returns to the county of Jasper in the state of Missouri, and continues in a southerly direction through said county of Jasper and through the counties of Newton and McDonald, and thence into the state of Arkansas and continues southerly to the Gulf of Mexico, as hereinafter more specifically set forth. The total mileage of your orator in the state of Missouri is 174 miles.

II.

This cause arises under the constitution and laws of the United States, for that it seeks to enjoin the enforcement and adoption as against your orator of the provisions, requirements and prohibitions in the act of the legislature of Missouri mentioned in paragraph VII hereof (hereinafter called the Act of 1905); said act being unconstitutional, violative of the provisions of the constitution of the United States and the amendments thereto, and contrary to the laws of the United States, all as hereinafter more particularly stated. The matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars.

3 III.

The defendants, John A. Knott, Joseph P. Rice and Frank Wightman constitute the duly elected and qualified Board of Railroad and Warehouse Commissioners of the state of Missouri (hereinafter referred to as the railroad commissioners) and are citizens and residents respectively of Marion county, city of St. Louis and Barry county in the state aforesaid, and that their statutory official residence is in the county of Cole in the state of Missouri. Defendant Herbert S. Hadley is Attorney General of the state of Missouri and is a citizen and resident of Cole county therein. Each of said parties is by the law, of which the law of 1905 is a part, required to do and perform the special duties hereinafter mentioned.

IV.

Defendants, Abernathy Furniture Company and The Kemper Grain Company, are each corporations duly created and existing under the laws of the state of Missouri, and are each citizens and

residents of that state with their principal office in the Western District thereof; that defendant, Geo. W. Wilbur, is a citizen and resident of Bates county, Missouri.

The defendants in this paragraph mentioned are herein designated as shippers, each being a person engaged in shipping over your orator's road and other roads in the state, to and from points therein, the commodities, the rates of which are attempted to be limited by the said Act of 1905. These defendants represent a class of shippers so numerous that it is impracticable to attempt to join them all; and the defendants named in this paragraph are made parties hereto for the purpose of determining the rights of your orators of all shippers under the said Act of 1905.

V.

Article 4 of Chapter 12 of the Revised Statutes of Missouri, 1899, of which the Act of 1905 has become a part, made provision for the classification of railroads and freights and provision for maximum rates. Sections 1191, 1192 and 1193 thereof provide as follows:

SEC. 1191. Roads Classified.—All railroads in the state of Missouri are hereby divided into three classes, to be known as class A, class B and class C. Class A shall include all through or trunk line railroads. Class B shall include all of the branch roads owned, leased or occupied by such through or trunk line railroad companies or corporations. Class C shall include all other railroads or parts of railroads, owned, leased or occupied or which may hereafter be owned, leased or occupied in this state, either wholly or in part.

SEC. 1192. Passenger Charges Regulated.—Any individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In class A, not exceeding three cents per mile, and in classes B and C not exceeding four cents per mile; provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under, than one-half of the rate above prescribed, and provided further, that the rates for transportation herein prescribed may be reduced as hereinafter provided.

SEC. 1193. Freight Classified.—All freights hereafter transported upon any railroad or part of a railroad in this state are hereby divided into four general classes, to be designated as first, second, third and fourth classes, and into seven special classes, to be designated as class D, E, F, G, H, I and J. Class D shall comprise all grain in car-loads. Class E shall comprise flour in barrels or more, and lime in lots of twenty-four barrels or more. Class F shall comprise salt in lots of sixty barrels or more, and cement, water-lime and stucco in lots of twenty-four barrels or more. Class G shall comprise lumber, lath and shingles in car-loads. Class H shall comprise live stock in car-loads. Class I

shall comprise agricultural implements, furniture and wagons. Class [illegible] shall comprise coal, brick, sand, stone, railroad ties and cord wood, and all heavy fourth-class articles in car-loads; and in addition to the several articles in the said special classes, shall be added other articles as and in the manner hereinafter prescribed, except in classes D, E, G and H; and all articles not before enumerated or subsequently set into said classes as hereinafter provided, shall be placed in and belong to the four general classes, to be classified by the railroad commissioners hereinafter to be provided.

Section 1284 fixes the maximum rates for the seven special classes of freight designated as classes D, E, F, G, H, I and J respectively. The statutes of the state also provide for the election and qualification of the railroad commissioners aforesaid, and prescribe their special duties, among which special duties in relation to the adoption and enforcement of the said Act of 1905 are these: To hear complaints against railroad companies; to compel the attendance of witnesses and the production of books and papers; to make annual reports to classify all articles of freight excepting the articles in special classes D, E, G and H; to require to be posted by each railroad company in the state in its depot or railroad station, and to be filed in the office of the railroad commissioners, a schedule of rates to be charged, which in no event must exceed the maximum rates at any time fixed by law, including the maximum rates fixed by the Act of 1905, which rates so shown by the schedules so filed with the railroad commissioners may not be changed except after ten days' public notice plainly stating the changes proposed to be made in the schedule, and the time when said changes shall go into effect; to require to be likewise filed and published all joint traffic arrangements with other common carriers; to see that all such schedules of rates are observed by all common carriers, if and when the common carrier shall neglect or refuse for thirty days to file or publish its schedule as aforesaid, as commissioners to make out and print such schedule for such carrier, delivering to it a copy thereof which shall be likewise posted in the depots and stations; to enforce statutory provisions imposing severe penalties for a failure to publish and file said schedule; to hear all complaints made by any person for a violation of any of said provisions of law as well as to institute on its own motion any such complaints. The statute of the state also especially provides for the support and enforcement of the provisions of the Act of 1905 by requiring the prosecuting attorney of each county to prosecute any carrier violating the provisions of law aforesaid whenever directed by the railroad commissioners, receiving for his services compensation equal to the amount allowed by law on forfeited recognizances, and the attorney general is required to assist in such prosecution and to prosecute other cases whenever directed by the railroad commissioners.

VI.

The legislature of the state of Missouri in 1903 passed an act, known as the act of 1903, as follows:

SECTION 1. That chapter 12 of article 4 of the Revised Statutes of Missouri of 1899 be and the same is hereby amended by adding thereto two new sections, to be between sections 1194 and 1195 of said chapter, to be known as section- 1194*a* and 1194*b*, providing for the fixing, modifying and enforcing freight rates, as follows:

SECTION 1194*a*. The board of railroad and warehouse commissioners are hereby authorized, empowered and required to fix, maintain and establish just and reasonable freight rates on all classes of freight, from, to and between all points and stations upon and along all lines of railroads in this state; and said board is authorized and empowered to reduce, change or modify any and all such freight rates so fixed and established as hereinafter provided. And said board may, of its own motion, and shall, upon the sworn complaint of any shipper, mayor, councilman, alderman or trustee of any city, town or village, first giving five days' written notice to the railroad company affected, or complained against, proceed to fix, establish, modify or reduce the freight rates or charges of any road from, to or between any and all points or stations in Missouri; and any and all orders fixing, establishing, modifying or reducing any such freight rates or charges shall be the judgment of said board and constitute the legal rates or charges that such railroad company may collect for the transportation of freight from, to and between its stations in Missouri; and said board shall, immediately upon the fixing establishing, modifying or reducing the freight rates or charges of any railroad company, notify such railroad in writing thereof; and said railroad shall comply with the orders and judgments of said board with reference to such freight rates or charges, within ten days after such notice. And if any railroad fails, refuses or neglects to put the rates so ordered by said board into effect and operation within ten days after notice, the board shall submit a certified copy of its order to the attorney general of the state, with notice that such railroad (designating the same), has failed to comply therewith. And the attorney general, upon receipt thereof, shall immediately institute suit in the name of said board of railroad and warehouse commissioners against such railroad, in the Supreme Court of the state, by mandamus or other proper remedy, to enforce said order of said board.

SECTION 1194*b*. All railroad companies doing business in this state shall, upon the request of the board of railroad and warehouse commissioners, furnish to said board copies of all its schedules of freight rates and charges, and all other papers and documents, including bills of lading and contracts for transportation of freight affecting in any way the transportation of freight within, into and from this state. And said board shall have full power and authority to examine all officers, agents and employés of said railroad companies, and all other persons, under oath or otherwise, to procure the necessary information to make just and reasonable freight rates or charges, and to ascertain if the freight rates so fixed by said board are being observed or violated. And said board shall have power to administer oaths, to issue subpœna for persons and papers, examine witnesses and to enforce the same in like manner as the Circuit

Courts of this state. And in the issuance and enforcement of the papers and process above, the jurisdiction shall be co-extensive with the state.

There was then and there adopted sections 1194*a* and 1194*b* to become part of article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, to be known as sections 1194*a* and 1194*b* and to be inserted between sections 1194 and 1195 of the said Revised Statutes.

VII.

The legislature of the state of Missouri at its session of 1905, passed the act herein called the Act of 1905, reading as follows:

SECTION 1. That section 1194 of the Revised Statutes of Missouri, 1899, concerning the regulation of freight charges, being part of article IV, of chapter 12, entitled "Corporations, private," be and the same is hereby repealed and the following, to be known as sections 1194, 1194*a*, 1194*b*, of said Revised Statutes, be enacted in lieu thereof, so that said sections shall be collocated between the existing sections 1193 and 1195 of said Revised Statutes of 1899.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad, designated in section 1191 as in classes A, B, or C shall demand, charge or receive a greater or higher rate for carrying from
6 initial to terminal points in this state articles named in the several classes herein designated, than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half per cent per hundred pounds for each additional 25 miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles or fractional part thereof. Class G, in car loads of 30,000 pounds mimimum weight, not exceeding 5 cents per one hundred pounds for the first 25 miles and not exceeding one-half cent per hundred pounds for the second 25 miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional 25 miles, or fractional part thereof. Class H, in car loads in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars) not exceeding $6.00 per car load for the first 25 miles, and not exceeding $3.00 per car load for the second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof, of over twelve miles. For the

carriage of any of the articles comprising class H in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded, namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches, shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class I, in car loads of 20,000 pounds minimum weight, not exceeding $14.00 per car load for the first 25 miles and not exceeding $2.00 per car load for the second 25 miles, or fractional part thereof, and not exceeding $2.00 per car load for each additional 25 miles, or fractional part thereof. (Class) In computing the rate of freight according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

SECTION 1194*a*. That for the violation of the foregoing sections the railroad company so offending shall forfeit and pay to any person thereby affected the freight rate charged, demanded, or received in excess of the rates prescribed in said section, together with all actual damages caused thereby, to be recovered in any court having jurisdiction thereof by the existing law. And (if) the plaintiff in such action recover judgment therein, the court shall treble the same and the plaintiff shall, on motion, be allowed a reasonable attorney's fee for bringing the action.

SECTION 1194*b*. All acts and parts of acts, and all rules and regulations, freight, schedules, classifications and groupings by railroad companies or the railroad and warehouse commissioners of this state in conflict with the provisions of this act are hereby repealed and declared void.

7 Said act under the constitution of the state of Missouri will take effect on the 16th day of June, 1905, which will be 90 days after adjournment of the session of the legislature at which the act was passed. The rates now being lawfully charged by your orator for the transportation of freight of the character mentioned in the said Act of 1905, are shown in schedule now on file with the railroad commissioners and posted in your orator's depots and railroad stations, and are far in excess of the maximum rates fixed by the said act of 1905, so that when said act becomes effective, if permitted to be enforced, it will require such a reduction in your orator's said rates as to make imperative a change in the said schedule, which change your orator does not propose to make, and cannot make without jeopardizing its property interests. The railroad commissioners propose and threaten to, and will, unless enjoined

herein, enforce the special provisions of the statute of the state for the enforcement of said Act of 1905 by entering upon investigations, both upon its own instigation and upon the complaint of shippers, and by determining and adjudging your orator's present schedule of rates posted and filed as aforesaid to be unreasonable, unjust and extortionate for the sole reason that said rates are higher than the maximum rates fixed by the said Act of 1905, and by requiring under the pain of large penalties, threatened to be enforced, your orator to file and publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905. Besides which, said railroad commissioners propose, as specially required by law, to file, post and publish as your orator's said schedule the maximum rates fixed in said act, if and when your orators refuse so to do, and they propose to direct each of the prosecuting attorneys in each of the counties through which the line of your orator runs, to prosecute and recover of your orator the large and excessive penalties provided by law, and to direct the defendant, the attorney general, to assist in such prosecutions, and to direct the defendant, the attorney general, to prosecute your orator and recover penalties provided by law for its failure to comply with the orders which the railroad commissioners propose from time to time to make in investigations instituted for the enforcement of the said Act of 1905, by compelling your orator to adopt a rate in accordance therewith. Said attorney general will, unless restrained herein, conduct said prosecutions and seek to recover said penalties.

The shippers along the line of your orator's railroad are very numerous and are daily engaged in making and receiving shipments to and from points in Missouri of freight of the special classes designated in the Act of 1905 so that unless restrained by this court there will be instituted by them a multiplicity of suits to recover of your orator treble damages sustained, together with attorney's fees in each case. Said parties being so numerous, and the causes of action which will accrue, so many, if the Act of 1905 be enforced, that it is not practicable to make more than part of said shippers defendants hereto, but all other shippers in the counties in the state of Missouri where your orator's line of railroad extends are likewise interested with those named as defendants herein, so that such as are named as such defendants should defend for all those having like interest, any such omitted party being permitted to become a defendant herein if so desired, to the end that all persons having a like interest will be bound by the decree to be entered herein, and the court have an opportunity to determine once for all the validity of said Act of 1905.

VIII.

Said Act of 1905 is invalid and inoperative and of no force or effect, for each of the following reasons:

(*a*) It fixes rates confiscatory in their nature, unreasonable
8 in amount, insufficient to permit your orator to operate its property in Missouri without loss, making it impossible for freight to be carried by your orator between points in Missouri at

any profit, all of which is contrary to and violative of the provisions of the constitution of the United States, and particularly of the fourteenth amendment thereto, prohibiting the taking of property without due process of law, and guaranteeing to all persons the equal protection of the laws.

(*b*) It is invalid as alleged in paragraphs XII and XIII hereof, whereby it is violative of said amendment to the constitution of the United States.

(*c*) It provides that in computing the rate of freight the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another. This impairs your orator's freedom of contract, fixes a rate for it based upon carriage over the line of another road, whereby the provisions of the federal constitution and the amendments thereto hereinbefore referred to, are violated, and the freedom of contract guaranteed by section 4, article 2, of the state constitution, denied.

(*d*) It provides in section 1194 that no individual, company or corporation owning, operating, managing, or leasing any railroad or part of railroad designated in section 1191 as in classes A, B or C shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state, articles named in the several classes therein designated than as therein provided for, but it also provides in section 1194*a* that the penalty for a violation of the act shall be enforced only against railroad companies, thereby exempting individuals from such penalties. This is a discrimination between individuals and companies, and denies to your orator the equal protection of the laws guaranteed to it by the fourteenth amendment to the constitution of the United States and section one thereof, as follows:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(*e*) It attempts to adopt and create as part of Article 4 of chapter 12 of the Revised Statutes of Missouri, 1899, two sections called sections 1194*a* and 1194*b*, when the Act of 1903 adopted sections so numbered as part of the same article and chapter. There was by the Act of 1905, no repeal nor attempted repeal of the Act of 1903. The Act of 1905 cannot be treated as amendatory of the Act of 1903 because it is insufficient, since it does not in any wise comply with the provisions of section 34, article 4, of the constitution of the state, as follows:

No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together

with the act or section amended, shall be set forth in full as amended.

The act is, therefore, invalid because the law, as it now stands, is uncertain, there being two separate enactments upon two different subjects designated as sections 1194*a* and 1194*b* of article 4 of chapter 12 of the Revised Statutes of 1899.

9 The rates now charged by your orator for state shipments of the classes of freight mentioned in the Act of 1905 are in excess of the maximums therein fixed. If, for the classes of freight mentioned in the Act of 1905, charges should be by your orator made at the maximum rates therein fixed for state shipments, your orator would be required to do such business not only without profit, but at a loss, and without any return upon its investment in this state. Such rates in said Act of 1905 mentioned are unjust, unreasonably low, confiscatory in their nature and will not make any return upon the investment in the property of your orator in this state. Taking the gross receipts of all the state business of whatsoever kind which your orator does, can or will do in Missouri when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, and deducting from the total receipts the cost of doing such business in the state, there will not be sufficient to pay operating expenses, and there will not be left any sum as profit or as a return upon the value of the property of your orator devoted to the use of such business in the state. The gross receipts arising from the transportation of each and all of the commodities mentioned in the Act of 1905 are at the rates provided in said act insufficient to defray the cost of the transportation thereof.

X.

The total earnings of your orator from local and state business in Missouri for the last few years were not in excess of:

For the fiscal year ending 1902, $129,716.83.

For the fiscal year ending 1903, $140,211.57.

For the fiscal year ending 1904, $146,134.70.

The expense of doing such local and state business for said three years was in excess of these figures:

For the fiscal year ending 1902, $134,516.35.

For the fiscal year ending 1903, $154,288.81.

For the fiscal year ending 1904, $157,620.88.

The reduction in rates made by the Act of 1905 will not increase the local traffic, and the volume of state and local business will not be more in 1905 than in 1904; while the expenses of doing such business will be as great; and if in the future said business increases there will be a proportional increase in said expenses.

XI.

There are in this state carrying therein the classes of freight mentioned in said act, and hence affected thereby, the following companies owning lines of railroad:

Chicago, Burlington & Quincy Railroad Company,

Atchison, Topeka & Santa Fe Railroad Company,

Chicago, Rock Island & Pacific Railway Company,
Missouri Pacific Railway Company,
St. Louis & San Francisco Railroad Company,
Missouri, Kansas & Texas Railway Company,
Chicago & Alton Railway Company,
Chicago, Milwaukee & St. Paul Railway Company,
Wabash Railroad Company,
St. Louis & Southwestern Railway Comapny,
Chicago Great Western Railway Company,
St. Joseph & Grand Island Railroad Company,
St. Louis & Hannibal Railroad Company,
Mississippi River & Bonne Terre Railroad Company,
Illinois Southern Railway Company,
Kansas City, Springfield & Southern Railroad Company.

Each and all of said companies claim that the maximum rates fixed by said Act of 1905 are confiscatory in their nature, and if charged, would result in said company doing its state business without any profit, which, as a fact, is true. Each of said companies has filed or will at once file a bill similar to that now presented by your orator. Even if in this cause it should be held that such maximum rates should be valid as against your orator, yet as a matter of fact, the same are unreasonably low as against each of said other companies and will not permit either of said companies to make a profit upon its state business, and, therefore, said act is invalid as against said company. This being true, the act, even if held valid as to your orator, is unconstitutional because it would thereby become discriminatory in that it would not apply alike to all persons or corporations operating railroads in this state whereby the pr-visions of the constitution of the United States, and the amendments thereto hereinbefore mentioned are violated.

XII.

Said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable and unconstitutional in this: the cost of transporting live stock is greater than that of any of the other commodities in which a reduction is made, yet said act reduces the rate thereon on an average of 39.23 per cent. which reduction in rates on salt and cement is only 20.29 per cent. and in the case of lumber, lath and shingles of 13.62 per cent. The different articles transported on your orator's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, and other circumstances well understood, and have remained in substantially the same classes for many years, which has been recognized, approved and enacted into law by the statutory classification in effect in Missouri since 1893, and as required by its railroad commission. The unequal, partial, arbitrary reduction in rates upon articles affected by said Act of 1905 as compared with other commodities and between the different commodities themselves included in said act, not only works an injustice between the shippers, purchasers,

manufacturers of the State of Missouri and deprives them of their property without due process of law and deprives them of the equal protection of the laws, but likewise operates to deprive your orator of its property without due process of law and deprives it of the equal protection of the laws in that the legislature, having established maximum rates of charges for the transportation of all kinds of property, which are presumably fair and reasonable, now attempts to further regulate the affairs of your orator and to require it to discriminate in favor of certain persons and shippers and to give them a right of transportation for a less rate than the general rate heretofore fixed by law than is just and reasonable in view of the cost to the carrier or the value of the service rendered to the shipper.

In consideration whereof, and forasmuch as your orator is remediless in the premises, and by the strict rules of the common law can only have relief in a court of equity where matters of this kind are properly cognizable and relievable, your orator prays: First, That the said act of the legislature of Missouri set forth in paragraph VII of this bill, and for convenience called the Act of 1905, be declared unconstitutional, unenforcible and not binding upon your orator. Second, That the defendants, John A.
11 Knott, Joseph R. Rice and Frank A. Wightman, as members of the board of railroad and warehouse commissioners of the state of Missouri, their agents and servants and successors, be temporarily and permanently enjoined and restrained from taking any step to put in force the maximum rates mentioned in said Act of 1905, from requiring your orator to post same at any place or to file same with them; from receiving a schedule thereof to be filed with them; from taking or making out, or printing, or delivering any schedule of rates for your orator containing the maximum rates fixed by said act; from instituting or permitting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said Act of 1905; from directing the attorney general of the state or any prosecuting or other attorney therein to prosecute or assist in prosecuting your orator, directly or indirectly, for any failure to file the schedule adopting the said maximum rates, or for any failure to recognize, adopt or comply with said Act of 1905. Third, That defendant, Herbert S. Hadley, the attorney general, and his assistants be temporarily and permanently enjoined and restrained from prosecuting or assisting in the prosecution of any suit or action against your orator to enforce against it in any action, directly or indirectly, any penalty in any wise dependent or based upon the failure of your orator to recognize and abide by the said Act of 1905. Fourth, That the defendants, Abernathy Furniture Company, the Kemper Grain Company and George W. Witter, and all other shippers affected by this proceeding, be temporarily and permanently enjoined and restrained from instituting any action or taking any steps to collect any damages or penalties for an alleged violation of said Act of 1905. Fifth, That your orator have such other and further relief as may be just and equitable.

And may it please your Honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said John A. Knott, Joseph P. Rice and Frank A. Wightman, as members of the board of railroad and warehouse commissioners of the state of Missouri, Herbert S. Hadley as attorney general of the state of Missouri, and Abernathy Furniture Company, The Kemper Grain Company and George W. Witter, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court, then and there to answer (but not under oath, such oath being expressly waived) all and singular the premises, and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
By S. W. MOORE, *Its Solicitor.*

FRANK HAGERMAN,
Of Counsel.

12 STATE OF MISSOURI,
County of Jackson, ss:

I, R. J. McCartey, upon oath say, I am Auditor of The Kansas City Southern R'y Co., complainant in the above entitled bill, and as such officer have charge of the receipts from the traffic operations of said company, and of the matters and things mentioned in said bills, which I have read. I know the contents thereof, and the same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

R. J. McCARTEY.

Subscribed and sworn to before me this 15 day of June, 1905.
[L. S.] CLARENCE R. HALL.

My commission expires October 10, 1908.

13 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

Restraining Order.

The original bill of complaint having been this June 23, 1905, by the solicitors for complainant duly presented, and the court being fully advised in the premises, orders and decrees: Complainant's application for temporary injunction herein is set down for hearing at the United States Circuit Court room in Kansas City, Missouri, on June 26, 1905, at 10 o'clock A. M., or as soon thereafter as it is convenient for the court to hear the same.

In the meantime, and until the further order of court herein, each and all of the above named defendant railroad commissioners, their agents, servants and successors, are restrained from taking any steps to put in force the maximum rates mentioned in the act of the legislature of the State of Missouri, approved April 15, 1905, and entitled "An Act, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad
14 classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof;'" from requiring complainant to post said maximum rates at any place, or to file same with them; from requiring a schedule thereof to be filed with them; from taking or making out, or printing or delivering any schedule of rates for complainant containing the maximum rates fixed by said act; from instituting any investigation of any complaint that any rate is unreasonable, extortionate or unjust because higher than the maximum rate fixed by said act; from directing the attorney general of the state, or any prosecuting attorney therein to prosecute or assist in prosecuting complainant directly or indirectly for any failure to file a schedule adopting said maximum rates; or for any failure to recognize, adopt or comply with said act.

And in the meantime, and until the further order of court herein, the above named attorney general and his assistants and successors are restrained from bringing any suit or action against complainant to enforce against it, directly or indirectly, any penalty in anywise dependent or based upon the failure of complainant to recognize or abide by the said act of the legislature.

And in the meantime and until the further order of court herein, the defendants John A. Knott, Joseph P. Rice, and Frank A. Wightman, Railroad Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, and all other shippers affected by this proceeding, are restrained from instituting any action, or taking any steps to collect any penalties for the alleged violation of said act of 1905.

(Signed) JNO. F. PHILIPS, *Judge.*

Received copy of the foregoing restraining order this — day of June, 1905, and the undersigned defendants enter their appearances in said case as of the August, 1905, rules.

15 Afterwards, to-wit, on the 27th day of June, 1905, the following order continuing Restraining Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY AND COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

16 No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

17 No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Order.

The application of complainants in above cases for temporary injunction coming on for hearing, this June 27th, 1905, complainants appearing by Frank Hagerman, their solicitor, and the Attorney General in person. At the request of the latter it is ordered that the said application be continued till July 8, 1905, and until further order of court the restraining order heretofore issued
18 shall continue in force.

(Signed) JNO. F. PHILIPS.
(Signed) SMITH McPHERSON,
Judge.

19 Thereupon a certified copy of the restraining order was duly issued, and the same with the following endorsement was returned and filed on the 8th day of July, 1905, to-wit:

Received copy of foregoing restraining order this — day of June, 1905, and the undersigned defendants enter their appearance in said case as of the August, 1905, rules.

ABERNATHY FURNITURE CO.
By T. L. HALL, Pres.
THE KEMPER GRAIN CO.
Per D. F. PLAZZEK.
G. W. WITTER.

Afterwards, to-wit, on the 12th day of July, 1905, the following order continuing restraining order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY Co., Complainant,
vs.
EDWARD T. HADLEY, Attorney General; JOSEPH P. RICK, JOHN A. [illegible] and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Order.

This cause came on for hearing this 12th day of July, 1905, upon complainant's application for temporary injunction. The complainant, the attorney general and the defendant railroad commissioners appeared by counsel; the other defendants having been notified of the hearing; and the court being fully advised in the premises, orders and adjudges:

1. The restraining order heretofore issued herein shall continue in full force and in force as a temporary injunction.

2. The complainant shall, on or before the 25th day of July, 1905, file herein an injunction bond in the sum of Ten Thousand dollars, to be approved by a judge or a clerk of this court, the defendants reserving to accept the individual bond of the complainant, conditioned to pay, in case said injunction be dissolved, all damages assessed herein to have been sustained by the defendants or any of them, or any person becoming a defendant herein.

(Signed) JNO. F. PHILIPS, *Judge.*

Afterwards, to-wit, on the 22nd day of July, 1905, the Injunction Bond was approved and filed. Said Injunction Bond is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
EDWARD T. HADLEY, Attorney General; JOSEPH P. RICK, JOHN A. [illegible] and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Injunction Bond.

Know all men by these Presents, That the above complainant [illegible] and firmly bound to above named defendants in the penal

sum of Ten thousand dollars ($10,000) well and truly to be paid in lawful money of the United States, for the payment of which it binds itself, its executors, administrators, successors and assigns.

This bond is made upon these conditions:

Whereas, the Court in above entitled cause made an order on July 12, 1905, granting a temporary injunction,

Now if said obligor pays, in case said injunction be dissolved, all damages ascertained herein to have been sustained by defendants or any of them, or any person becoming a defendant herein, then this obligation to be void; otherwise in force and effect.

Witness the hand and seal of said party this July 14th 1905.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY,

[SEAL.] By J. A. EDSON, *Its President.*

Attest:

R. J. McCARTEY, *Ass't Secretary.*

22 The foregoing bond is approved this 22 day of July 1905, the appearing defendants wa-ving the necessity of any surety signing the bond.

ADELAIDE UTTER, *Clerk.*

Afterwards, to-wit, on the 7th day of August, A. D. 1905, the joint demurrer of John A. Knott, et al., was filed.

Said demurrer is in words and figures as follows:

23 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company and George W. Witter, Defendants.

The Joint Demurrer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, Three of the Above Named Defendants, to the Bill of Complaint of the Kansas City Southern Railway Company, the Above Named Complainant.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demur to the said bill, and for causes of demurrer show:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill against these defendants, or either of them.

24 2. That said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this State, of such articles of freight, maximum rates for the transportation of which are not fixed by said act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its entire intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity, on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said Act of 1905 took effect, and obtaining the restraining order herein, before said Board of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intra-state traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

25 Wherefore, and for divers other good causes of demurrer appearing on said bill, these defendants demur thereto, and they pray judgment of this honorable Court whether they shall be compelled to make further or any answer to the said bill; and they humbly pray to be hence dismissed with their reasonable costs in their behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendants.

SANFORD B. LADD, *Of Counsel.*

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of Herbert S. Hadley, Attorney General was filed.

Said demurrer is in words and figures as follows:

26 Afterwards, to-wit, on the 7th day of August, 1905, the demurrer of Herbert S. Hadley, Attorney General, was filed. Said demurrer is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

The Demurrer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Above-named Defendants, to the Bill of Complaint of the Kansas City Southern Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for cause of demurrer shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. The said bill of complaint of the complainant is wholly without equity.

3. That it does not appear from said bill of complaint that charges for the transportation, between points within this
27 State, of such articles of freight, maximum rates for the transportation of which are not fixed by said Act of 1905, might not or could not have been established by the complainant, if it had chosen to make any effort to do so, or by said Board of Railroad Commissioners, if it had been permitted by the complainant to do so, at such rates as would have been reasonable and just, both to the complainant and to the public, observance of which and of the provisions of the Act of 1905, in the transportation by complainant of its intra-state traffic, would, as a whole, have rendered to the complainant a fair and reasonable profit for the service of transporting the same. The complainant has made no effort or attempt to readjust its schedules of freight rates, as a whole, with a view of complying with the requirements of said Act of 1905, nor has it afforded to the said Board of Railroad Commissioners any opportunity on its part, of making such effort, but, on the contrary, by filing the bill of complaint herein on the day said act of 1905 took effect, and obtaining the restraining order herein, before said Board

of Railroad Commissioners could, by any possibility, have taken any action in the direction of establishing freight rate schedules for intrastate traffic, which, considered as a whole, would produce a reasonable compensation to the complainant for its service, has prevented said Board from making any such effort.

4. That this defendant is not a proper party defendant to the bill of complaint.

Wherefore, and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this Honorable Court whether he shall be compelled to make further, or any answer, to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

28 SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

29 Afterwards, to-wit, on the 7th day of August, 1905, the Demurrer of The Kemper Grain Company to the Bill of Complaint was filed. Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

The Demurrer of The Kemper Company, One of the Above-named Defendants, to the Bill of Complaint of The Kansas City Southern Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

30 Wherefore and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

31 Afterwards, to-wit, on the 7th day of August, 1905, the Demurrer of Abernathy Furniture Company to the Bill of Complaint was filed. Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

The Demurrer of The Abernathy Furniture Company, One of the Above-named Defendants, to the Bill of Complaint of The Kansas City Southern Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained, to be true, in such manner and form as the same are therein

and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

32 Wherefore and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

33 Afterwards, to-wit, on the 7th day of August, 1905, the Demurrer of George W. Witter, to the Bill of Complaint was filed.

Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

The Demurrer of George W. Witter, One of the Above-named Defendants, to the Bill of Complaint of the Kansas City Southern Railway Company, the Above-named Complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint con-

tained, to be true, in such manner and form as the same are therein and thereby set forth and alleged, demurs to the said bill, and for causes of demurrer, shows:

1. That it appears by the complainant's own showing by the said bill, that it is not entitled to the relief prayed by said bill, or any relief whatever, against this defendant.

2. That said bill of complaint of the complainant is wholly without equity.

3. That this defendant is not a proper party defendant to the bill of complaint.

34 Wherefore and for divers other good causes of demurrer appearing on said bill, this defendant demurs thereto, and he prays the judgment of this honorable Court whether he shall be compelled to make further or any answer to the said bill; and he humbly prays to be hence dismissed with his reasonable costs in his behalf sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Defendant.

SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendant.

35 Afterwards, to-wit, on the 14th day of October, 1905, a waiver of affidavits to demurrers was filed. Said waiver of affidavits is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

The affidavits of the defendants to the several demurrers this day filed herein to the Bill of Complaint, are hereby waived.

Kansas City, Mo., August 7, 1905.

FRANK HAGERMAN,
Solicitors for Complainant.

36 Afterwards, to-wit, on the 14th day of October, 1905, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY CO., Complainant.
vs.
JOHN A. KNOTT et al., Defendants.

Order.

This cause coming on for hearing this October 14, 1905, upon each and all of the demurrers heretofore filed by defendants herein, the complainant appeared by Frank Hagerman, its solicitor, and the court being fully advised in the premises overrules each and all of the said demurrers, and at the request of the said solicitor of said defendants they are given until the November 1905, Rules in which to file answers.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, towit, on the 28th day of November, 1905, the Joint and Several Answer of John A. Knott, et al., was filed. Said Answer is in words and figures as follows:

37 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

The Joint and Several Answer of John A. Knott, Joseph P. Rice, and Frank A. Wightman, Three of the Defendants, to the Bill of Complaint of The Kansas City Southern Railway Company, Complainant.

These defendants respectively now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

I.

They admit the averments of paragrap*g* numbered I of complainant's bill of complaint, except in the following particular; They say that they have no knowledge, information or belief as to whether the lines owned and operated by the complainant are of the length, respectively, stated, or aggregate a total mileage of 174 miles, as therein stated.

38

II.

These defendants admit that this cause arises under the Constitution and Laws of the United States; but they deny that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. They admit that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars (2,000).

III.

They admit that they constitute the Board of Railroad Commissioners of the State of Missouri, and that the defendant, Herbert S. Hadley, is the Attorney General of the State of Missouri, but they deny that either they or the said defendant, Hadley, are required by law to do or perform the special duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

They admit that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, these defendants have no knowledge, information or belief.

V.

They admit that paragraph V of the complainant's bill of complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri of 1899, and that Section 1194 of said Revised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I and J, respectively. They admit that the statutes of the State pro-
39 vide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of complaint, regarding the special duties imposed upon them, and upon prosecuting attorneys and the Attorney General by the statutes of the State, they aver that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri, of 1899, and an Act of the General Assembly of the State

of Missouri, entitled, "An Act to Amend Chapter 12 of the Revised Statutes of the State of Missouri, of 1899, entitled, 'Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this state, and providing for the manner of so doing and enforcing the same, approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said Statutes and Act, this Court will take judicial notice, prescribe particularly all the duties imposed by law upon these defendants, constituting the Board of Railroad Commissioners, and Prosecuting Attorneys and the Attorney General, respecting freight rates and the enforcement of any laws of this State governing or affecting the same; and they beg leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer with like effect as if they had been fully set out herein.

VI.

These defendants admit the passage by the legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

40 VII.

These defendants admit the passage by the legislature of the State of Missouri, of the Act approved April 15, 1905, and that said Act is correctly set out in paragraph VII of said bill of complaint. They admit that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in schedules on file with the Railroad Commissioners; but these defendants deny that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act, in excess of the maximum rates fixed by said Act of 1905. They admit that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but these defendants deny that such change could not and cannot be made by the complainant without jeopardizing its property interests. These defendants deny that they had at or before the filing of said bill of complaint, threatened to enforce the provisions of said Act of 1905 by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers, or by determining or adjudging complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the

complainant, under pain of any penalties, to file or publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and they deny that they proposed to do any of said
41 things. They deny that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. They deny that at that time they proposed to make any such investigations. On the contrary, these defendants aver that when this suit was begun the time had not arrived at which these defendants could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not *been* then arrived, when they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905, should have taken effect. They deny that any prosecuting attorney or the Attorney General would have conducted such prosecutions or sought to recover any such penalties.

As to whether shippers along the lines of the complainant's railroad were then and are now numerous, or engaged daily or at all in making or receiving shipments to or from points in the State of Missouri of any freight of the special classes designated in said Act of 1905, these defendants have no knowledge, information or belief. They deny that by any such shippers or shipper there would have been or will be instituted suits to recover of the complainant any damages or attorneys' fees for charging rates higher than those fixed by said Act of 1905
42 Whether any other shippers in the counties in the State where the complainant's line of road extends, are interested with these named as defendants herein, these defendants have no knowledge, information or belief; but they deny that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

These defendants deny that said Act of 1905 is invalid or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. They deny that said Act fixes rates confiscatory in their nature or unreasonable in amount, or insufficient to permit the complainant to operate its property in Missouri, without loss, or makes it impossible for freight to be carried by the complainant between points in Missouri, at any profit. They deny that all or any part of said Act is contrary to or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto,

They deny that said Act is invalid, as alleged in paragraph XII or paragraph XIII of said bill of complaint, or that it is violative of said Fourteenth Amendment to the Constitution of the United States. They deny that the provision of said Act, that in computing the rate of freight, the distance shall be computed from the point where it is received to the point of destination in the State, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the federal constitution or of any amendment thereto is violated, or that the freedom of contract guaranteed by
43 Section 4 of Article 2 of the State Constitution is denied. They deny that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

These defendants further aver that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid and complete enactment, capable of enforcement. They aver that the effect of said Section 1194*a* is not to discriminate against the complainant, and that at the time of the taking effect of said Act of 1905, there was not and is not now any railroad or part of railroad in the State of Missouri, which is not owned and operated by a railroad company. They deny that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the Complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

IX.

These defendants admit that the rates, at the time of the filing of the said bill of complaint, and now charged by the complainant for State shipments on some of the classes of freight mentioned in said Act of 1905, were and are in some cases, in excess of the maximums therein fixed, but they are informed and believe that, as to some of the commodities mentioned in said Act, the rates so charged by the complainant were and are less than the maximum rates fixed by
44 said Act. They deny that if charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at the maximum rates fixed in said Act, the complainant would be required to do such business without profit or at any loss or without any return upon its investment in this state. They deny that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature, or that they will not make a return upon the investment in the property of complainant in this State, or that the gross receipts of all the State business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the State, or that there will

not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this state.

They deny that the gross receipts for the transportation of any of the commodities mentioned in said Act at the maximum rates therein mentioned are insufficient to pay the cost of the carriage thereof.

X.

These defendants have no knowledge, information or belief as to whether the total earnings of the complainant for local and state business in the years mentioned in Paragraph X of the bill of complaint, or any of them were not in excess of the amounts in said paragraph stated, or whether the expenses of doing said local and state business was in excess of the amounts stated in said paragraph. They have no knowledge, information or belief as to the amounts of the earnings or of the expenses of the complainants for any year whatever.

45 As to whether any reduction in rates made by the Act of 1905 will not increase the local traffic, or whether the volume of State and local business will not be more in 1905 than it was in 1904, or whether the expenses of doing said business will be as great, or whether in the future there will be a proportionate increase in said expenses, these defendants have no knowledge, information or belief.

XI.

These defendants admit that the companies mentioned in paragraph XI of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their State business without any profit. But these defendants deny that such claim is in point of fact true.

These defendants deny that the maximum rates fixed by said Act of 1905 are unreasonably low as against any of said companies, or that they will not permit any of them to make a profit upon their State business, or that for that reason said Act is invalid as against any of said companies.

They deny that said Act if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this State. They aver that the only discrimination of which the complainant will be allowed to complain, is a discrimination

46 tion against itself in favor of some other person or corporation; and they deny that any of the provisions of the Constitution of the United States or of any of the amendments thereto are in any respect violated by said Act.

XII.

Further answering, and with special reference to the averments of paragraph XII of the complainant's bill of complaint, these defendants say that said Act of 1905 fixes and establishes maximum rates which are unjust, unreasonable or unconstitutional for any reason.

These defendants have no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Act, or whether the same relation to the rate of said livestock on an average of 39.23 per cent, or whether the reduction in rates on salt and cement is only [illegible] per cent, or in the case of lumber, lath and shingles, 13.62 per cent. They have no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, [illegible] of injury, bulk, volume of traffic, or any other circumstances and have remained in substantially the same classes for any period of time, or whether the same has been recognized approved or enacted into law by any statutory classification in effect in Missouri.

They deny that any reduction in rates upon articles affected by the said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities or as between the commodities mentioned in said Act. Or that the same works any injustices between shippers, purchasers or manufacturers of the State of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of its property without due process of law, or deprives the complainant of the equal protection of the laws or any of the matters, or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. They deny that the legislature had or has established maximum rates of charges for the transportation of all kinds of property, or that even if the legislature has done so, any change effected in such rates by said Act of 1905, is unreasonably unfair or unreasonable in any respect. They deny that the legislature require the complainant to discriminate in favor of any persons or shippers or to give them a right of transportation at a rate less than the general rate heretofore fixed by any law; or that said rate is less than is just and reasonable in view of the cost of service and the value of the service rendered to the shipper.

XIII.

These defendants further answering, say that they are informed and believe that the complainant and seventeen other railroad companies, owning and operating lines of railroad in the State of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such manner as to yield compliance to said Act and at the same time derive a reasonable

[illegible]

profit upon the fair valuation of their property necessary to carry on their intra-State business, but determined, on concerted action among themselves, to disobey said Act, to deny its validity and any obligations on their part to comply with it, and to bring suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the State from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

These defendants further aver that in pursuance of said agreement and understanding, this complainant and the said seventeen other companies or corporations did, on the 16th day of June, 1905, each for itself, file in this court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, and praying for substantially the same relief, and did, on the same day, in each of said suits, obtain from this court a restraining order, directed to and which was served upon these defendants and the Attorney General of the State of Missouri, and certain persons designated in said bills of complaint as shippers, enjoining these defendants and the Attorney General from performing any of the duties imposed upon them as State officials,

by law, looking to the enforcement of the provisions of said
49 Act, (for the express terms of which said order these defendants pray leave to refer to the same as it appears in the record of this cause), and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

These defendants say that they are informed and believe that the rates fixed by said act of 1905, do not affect all the articles of freight transported by the complainant in its intra-state traffic, but that a very large number of articles, and a very large part of its intra-State traffic remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And these defendants say that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-State business.

These defendants are informed and believe that the complainant, if it had chosen to do so, instead of attacking the reasonableness of fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule or tariff of rates upon all the articles of freight transported by it in carrying on its intra-State traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act, would have been not unreasonable or unjust, either to itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-State —.

50 These defendants further aver that the complainant afforded to these defendants, as a Board of Railroad Commissioners, no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-State traffic, including those mentioned in said Act of 1905, in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in said Act, should be not unreasonable or unjust, either to the complainant or to the public.

These defendants further say that if the complainant had failed to so revise or to attempt to revise its schedules, these defendants, as such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-State traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and they believe that they could have done so.

These defendants further say that by the issue of the restraining order and the preliminary injunction in this cause, they have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to shippers; that the complainant, by the filing of its bill before these defendants, as such Board, could lawfully act in the premises,

51 has unwarrantedly assumed that these defendants, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

These defendants say that in view of the statutes of this State which define the duties to be discharged by them, as such Board, this action ought not to be maintained, because it was brought before these defendants had any opportunity to discharge any of such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that any other matter, cause or thing in the complainant's said bill of complaint, or amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

Afterwards, to wit, on the 1st day of December, 1905, the Answer of Herbert S. Hadley, Attorney General was filed. Said Answer is in words and figures as follows:

52 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

The Answer of Herbert S. Hadley, Attorney General of the State of Missouri, One of the Defendants, to the Bill of Complaint of The Kansas City Southern Railway Company, Complainant.

This defendant now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to answering, says:

I.

He admits the averment of paragraph numbered I of complainant's bill of complaint, except in the following particulars; He says that he has no knowledge, information or belief as to whether the lines owned and operated by the complainant are of the length, respectively stated, or aggregate a total mileage of 174 miles, as therein stated.

53 II.

This defendant admits that this cause arises under the Constitution and Laws of the United States; but he denies that said Act of 1905 is unconstitutional or violative of the provisions of the Constitution of the United States or of the Fourteenth Amendment thereto, or contrary to the laws of the United States. He admits that the matter and amount in dispute exceeds, exclusive of interest and costs, the sum or value of Two Thousand Dollars ($2,000.).

III.

He admits that the defendants John A. Knott, Joseph P. Rice and Frank A. Wightman constitute the Board of Railroad Commissioners of the State of Missouri, and that this defendant is the Attorney General of the State of Missouri, but he denies that either they or said defendant are required by law to do or perform the special

duties mentioned in said bill of complaint, except as in this answer hereinafter admitted.

IV.

He admits that the other defendants are citizens and residents respectively of the State of Missouri, and of the counties of said State mentioned in paragraph IV of said bill of complaint; but whether each or any of them are engaged in shipping over the complainant's road or other roads in the State of Missouri, any of the commodities mentioned in the Act of 1905, or whether they represent any class of shippers, this defendant has no knowledge, information or belief.

V.

He admits that paragraph V of complainant's bill of complaint, correctly sets out Sections 1191, 1192 and 1193 of the Revised Statutes of Missouri of 1889, and that Section 1194 of said Re-
54 vised Statutes fixed the maximum rates for the classes of freight designated in said Section 1193, as Classes D, E, F, G, H, I, and J, respectively. He admits that the statutes provide for the election and qualification of Railroad Commissioners, and prescribe their special duties, and as to the allegations in paragraph V of said bill of Complaint, regarding the special duties imposed upon them, and upon prosecuting attorneys and the Attorney General by the statutes of the State, he avers that Articles II and IV of Chapter 12 of the Revised Statutes of Missouri, of 1899, and an Act of the General Assembly of the State of Missouri, entitled, "An Act to Amend Chapter 12 of the Revised Statutes of the State of Missouri of 1899, entitled, 'Corporations, private,' by adding two new sections after Section 1194, to be known as Sections 1194*a* and 1194*b*, providing that the board of railroad and warehouse commissioners shall fix, maintain, establish, reduce and modify freight rates upon all railroads in this state, and providing for the manner of so doing and enforcing the same, approved April 6, 1903, published in the "Laws of Missouri, passed at the Session of the Forty-second General Assembly," at page 132, of which said Statutes and Act, this Court will take judicial notice, prescribe particularly all the duties imposed by law upon those defendants, constituting the Board of Railroad Commissioners, and Prosecuting Attorneys and the Attorney General, respecting freight rates and the enforcement of any laws of this State governing or affecting the same; and he prays leave to refer to said statutes and said Act, and that the same may be considered in connection with this answer with like effect as if they had been fully set out herein.

VI.

This defendant admits the passage by the legislature of the State of Missouri, of the Act approved April 6, 1903, and that said Act is correctly set out in paragraph VI of said bill of complaint.

55 VII.

This defendant admits the passage by the legislature of the State of Missouri, of the Act approved April 15, 1905, and that said Act is correctly set out in paragraph VII of said bill of complaint. He admits that said last named Act took effect on the 16th day of June, 1905; that the rates at the time of the filing of said bill of complaint being charged by the complainant for the transportation of freight of the character mentioned in said last named Act, were shown in schedules on file with the Railroad Commissioners; but this defendant denies that said rates so charged by complainant were, as respects all the freight of the character mentioned in said Act, in excess of the maximum rates fixed by said Act of 1905. He admits that as to some of the commodities mentioned in said Act, the same would require some reduction in the rates charged by the complainant, for the transportation thereof at the time of the filing of said bill of complaint, and that such reduction would make necessary a change in the schedules so filed by the complainant with the Railroad Commissioners; but this defendant denies that such change could not and cannot be made by the complainant without jeopardizing its property interests. This defendant denies that the Railroad Commissioners had at or before the filing of said bill of complaint, threatened to enforce the provisions of said Act of 1905 by entering upon investigations, either upon the instigation of the Board of Railroad Commissioners or on the complaint of shippers, or by determining or adjuging complainant's then existing schedule of rates to be unreasonable, unjust or extortionate, or by requiring the complainant, under pain of any penalties, to file or publish a new schedule fixing rates not in excess of those mentioned in said Act of 1905; and he denies that they proposed to do any of said

56 things. He denies that they proposed to file, post or publish as the complainant's schedule, the maximum rates fixed in said Act of 1905, if the complainant should refuse to do so, or to direct any prosecuting attorney to prosecute or recover of complainant any penalties, or to direct the Attorney General to assist in any such prosecution, or recover any penalties for the complainant's failure to comply with the orders which they proposed from time to time to make in investigations instituted for the enforcement of said Act of 1905. He denies that at that time they proposed to make any such investigations. On the contrary, this defendnat avers that when this suit was begun the time had not arrived at which the Railroad Commissioners could take any action whatever under or in pursuance of said Act of 1905, and that they were not at that time proposing, because the time had not then arrived, whey they, as such Board of Railroad Commissioners, could properly or lawfully propose any action in the premises. They had not, as a Board, determined or considered the course proper to be pursued by them in respect of the matter when said Act of 1905, should have taken effect. He denies that any prosecuting attorney or the Attorney General would have conducted such prosecutions or sought to recover any such penalties.

As to whether shippers along the lines of the complainant's railroad were then and are now numerous, or engaged daily or at all in making or receiving shipments to or from points in the State of Missouri of any freight of the special classes designated in said Act of 1905, this defendant has no knowledge, information or belief. He denies that by any such shippers or shipper there would have been or will be instituted suits to recover of the complainant any damages or attorney's fees for charging rates higher than those fixed by said Act of 1905.

57 Whether any other shippers in the counties in the State where the complainant's line of road extends, are interested with these named as defendants herein, this defendant has no knowledge, information or belief; but he denies that any shipper or other person not named as a defendant in this action can or will be bound by any decree which may be entered herein.

VIII.

This defendant denies that said Act of 1905 is invalid or inoperative or of no force or effect for any of the reasons mentioned in paragraph VIII of the complainant's said bill of complaint. He denies that said Act fixes rates confiscatory in their nature or unreasonable in amount or insufficient to permit the complainant to operate its property in Missouri, without loss, or makes it impossible for freight to be carried by the complainant between points in Missouri, at any profit. He denies that all or any part of said Act is contrary to or violative of the provisions of the Constitution of the United States, or of the Fourteenth Amendment thereto. He denies that said Act is invalid, as alleged in paragraph XII or paragraph XIII of said bill of complaint, or that it is violative of said Fourteenth Amendment to the Constitution of the United States. He denies that the provision of said Act, that in computing the rate of freight, the distance shall be computed from the point where it is received to the point of destination in the State, notwithstanding it may pass from one road to another, impairs the complainant's freedom of contract or fixes a rate for it based upon carriage over the line of another road, or that thereby any provision of the federal constitution or of any amendment thereto is violated, or that the freedom of contract guaranteed by Section 4 of Article 2 of

58 the State Constitution is denied. He denies that said Section 1194*a* is a discrimination between individuals and companies, or denies to the complainant the equal protection of the law guaranteed to it by the Fourteenth Amendment to the Constitution of the United States.

This defendant further avers that even if said Section 1194*a* did operate to discriminate against the complainant, it might be stricken out and Section 1194 would remain a valid and complete enactment, capable of enforcement. He avers that the effect of said Section 1194*a* is not to discriminate against the complainant, and that at the time of the taking effect of said Act of 1905, there was not and is not now any railroad or part of railroad in the State of Missouri, which is not owned and operated by a railroad company.

He denies that said law as it now stands is uncertain, as averred in subdivision (*e*) of paragraph VIII of the complainant's bill of complaint, for the reason stated therein, or for any other reason, or that said Act of 1905 is invalid because of any reason stated in said subdivision (*e*).

IX.

This defendant admits that the rates, at the time of the filing of the said bill of complaint, and now charged by the complainant for State shipments on some of the classes of freight mentioned in said Act of 1905, were and are in some cases, in excess of the maximums therein fixed, but he is informed and believes that, as to some of the commodities mentioned in said Act, the rates so charged by the complainant were and are less than the maximum rates fixed by said Act. He denies that if charges for the classes of freight mentioned in said Act of 1905 should be made by the complainant at
59 the maximum rates fixed in said Act, the complainant would be required to do such business without profit or at any loss or without any return upon its investment in this state. He denies that the rates fixed in said Act are unjust or unreasonably low or confiscatory in their nature, or that they will not make a return upon the investment in the property of complainant in this State, or that the gross receipts of all the State business which the complainant does, can or will do in Missouri, when charging the maximum rates fixed by the Act of 1905, for the classes of freight therein mentioned, will not be sufficient to pay the operating expenses and the cost of doing such business in the State, or that there will not be left any sum as profit or return upon the value of the property of the complainant devoted to the use of such business in this state.

He denies that the gross receipts for the transportation of any of the commodities mentioned in said Act at the maximum rates therein mentioned are insufficient to pay the cost of the carriage thereof.

X.

This defendant has no knowledge, information or belief as to whether the total earnings of the complainant for local and state business in the years mentioned in paragraph X of the bill of complaint, or any of them were not in excess of the amounts in said paragraph stated, or whether the expenses of doing such local and state business was in excess of the amounts stated in said paragraph. He has no knowledge, information or belief as to the amount of the earnings or of the expenses of the complainant for any year whatever.

As to whether any reduction in rates made by the Act of 1905 will not increase the local traffic, or whether the volume of state and local business will not be more in 1905 than it was in
60 1904, or whether the expenses of doing said business will be as great, or whether in the future there will be a proportional increase in said expenses, this defendant has no knowledge, information or belief.

XI.

Defendant admits that the companies mentioned in paragraph XI of the complainant's bill of complaint carry the classes of freight mentioned in said Act, and that they claim that the maximum rates thereby fixed are confiscatory in their nature, and if charged would result in their doing their State business without any profit. But this defendant denies that such claim is in point of fact true.

This defendant denies that the maximum rates fixed by said Act of 1905 are unreasonably low as against any of said companies, or that they will not permit any of them to make a profit upon their State business, or that for that reason said Act is invalid as against any of said companies.

He denies that said Act if held valid as to complainant, is unconstitutional because of any alleged discrimination between the complainant and any other persons or corporations operating railroads in this State. He avers that the only discrimination of which the complainant will be allowed to complain, is a discrimination against itself in favor of some other person or corporation; and he denies that any of the provisions of the Constitution of the United States or of any of the amendments thereto are in any respect violated by said Act.

XII.

Further answering, and with special reference to the averments of paragraph XII of the complainant's bill of complaint, this defendant denies that said Act of 1905 fixes and establishes
61 maximum rates which are unjust, unreasonable or unconstitutional for any reason.

This defendant has no knowledge, information or belief as to whether the cost of transporting live stock is greater than that of any of the other commodities mentioned in said Act, or whether the same reduces the rate on said livestock on an average of 39.23 per cent, or whether the reduction in rates on salt and cement is only 20.29 per cent, or in the case of lumber, lath and shingles, 13.62 per cent. He has no knowledge, information or belief as to whether the different articles transported on complainant's railway have been arranged in classes according to cost of carriage, price, risk of injury, bulk, volume of traffic, or any other circumstances or have remained in substantially the same classes for any period of time, or whether the same has been recognized approved or enacted into law by any statutory classification in effect in Missouri.

He denies that any reduction in rates upon articles affected by the said Act of 1905 is unequal or partial or arbitrary as compared with any other commodities or as between the commodities included in said Act. Or that the same works any injustice between shippers, purchasers or manufacturers of the State of Missouri, or deprives them of their property without due process of law, or deprives them of the equal protection of the laws, or operates to deprive the complainant of the equal protection of the laws by any of the methods, or for any of the reasons mentioned in said paragraph XIII of the bill of complaint. He denies that the legislature had or has estab-

lished maximum rates of charges for the transportation of all
62 kinds of property, or that even if the legislature had done so, any change effected in such rates by said Act of 1905, is presumably unfair or unreasonable in any respect. He denies that the legislature requires the complainant to discriminate in favor of any persons or shippers or to give them a right of transportation for a less rate than the general rate heretofore fixed by any law; or that such rate is less than is just and reasonable in view of the cost to the carrier and the value of the service rendered to the shipper.

XIII.

This defendant, further answering, avers that he is not a proper party defendant to said bill of complaint, and that the same is wholly without equity as against this defendant.

XIV.

This defendant further answering, says that he is informed and believes that this complainant and seventeen other railroad companies or corporations, owning and operating lines of railroad in the State of Missouri, immediately after the approval of said Act of 1905, agreed and came to an understanding with each other, that none of them would comply with the provisions thereof, or transport the commodities named in said Act at the rates mentioned therein, or make any effort to revise their schedules of rates for transporting the commodities mentioned in said Act and other commodities transported by them, in such manner as to yield obedience to said Act and at the same time derive a reasonable profit upon the fair valuation of their property necessary to carry on their intra-State business, but determined, on concerted action among themselves, to disobey said Act, to deny its validity and any obligations on their part to comply with it, and to bring
63 suits, each of them for itself, on the day said Act should take effect, to enjoin the officers of the State from taking any action or discharging any duties which might be imposed upon them by law in respect of said Act, and for the further purpose of obtaining a decree of this court adjudging said Act to be null and void upon the grounds stated in this complainant's bill of complaint.

This defendant further avers that in pursuance of said agreement and understanding, this complainant and the seventeen other companies or corporations did, on the 16th day of June 1905, each for itself, file in this court its bill of complaint, all of them being upon substantially the same grounds as those stated in this complainant's bill of complaint, and praying for substantially the same relief, and did, on the same day, in each of said suits, obtain from this court a restraining order, directed to and which was served upon the members of said Board of Railroad Commissioners, this defendant and certain persons designated in said bills of complaint as shippers, enjoining this defendant and the said Board from performing any of the duties imposed upon them as State officials, by law, looking to the enforcement of the provisions of said Act (for the express terms of which said order this defendant prays leave

to refer to the same as it appears in the record of this cause), and afterwards, while said restraining order was in force, did obtain from this court a preliminary injunction in the terms of said order, which said preliminary injunction is still operative.

This defendant says that he is informed and believes that the rates fixed by said Act of 1905, do not affect all the articles of freight transported by the complainant in its intra-State traffic, but that a very large number of articles, and a very large part of its
64 intra-State traffic remain wholly unaffected and unregulated as to rates, by said Act or by any other existing statute. And this defendant says that the question of whether rates are compensatory or otherwise, can only be determined upon a consideration of a schedule of rates which shall embrace every article and all the freight transported by the complainant in carrying on its intra-State business.

This defendant is informed and believes that the complainant, if it had chosen to do so, instead of attacking the reasonableness or fairness of the rates upon the few articles mentioned in the Act of 1905, might have revised its schedule or tariff of rates upon all the articles of freight transported by it in carrying on its intra-State traffic, including those mentioned in said Act of 1905, in such a manner that the rates for carrying the articles not mentioned in said Act, would have been not unreasonable or unjust, either to itself or to the public, and that the income derived by the complainant for performing the service of transporting freight at the rates and charges fixed in such a schedule, would have been sufficient to assure to the complainant a fair and reasonable return upon the fair value of its property necessarily employed in the carrying on of such intra-State traffic.

This defendant further avers that the complainant afforded to the Board of Railroad Commissioners no opportunity, after said Act of 1905 took effect, to revise, adjust and fix a schedule of rates upon all the articles of freight transported by the complainant in its intra-State traffic, including those mentioned in said Act of 1905,
65 in such a manner that the provisions of said Act of 1905 would be observed, and at the same time the rates upon all other articles not mentioned in said Act, should be not unreasonable or unjust, either to the complainant or to the public.

This defendant is informed and believes that if the complainant had failed to so revise or to attempt to revise its schedules, the defendants, members of such Board, would, if they had been given the opportunity, which was denied to them by the injunction in this cause, in the discharge of the duties imposed on them by law, have attempted to fix and establish such a schedule of rates upon all the articles of freight transported by the complainant in its intra-State traffic, as would have observed or complied with the provisions of said Act of 1905, and in other respects have been not unjust or unfair either to the complainant or to the public, and he believes that they could have done so.

This defendant further avers that by the issue of the restraining order and the preliminary injunction in this cause, the members of

said Board have been prevented from fixing any such schedule or attempting to fix a schedule of rates which should be just to the complainant and to shippers; that the complainant, by the filing of its bill before they, as such Board, could lawfully act in the premises, has unwarrantably assumed that they, as such Board, would fix and establish a schedule of rates which would be unjust to the complainant.

This defendant says that in view of the statutes of this State which define the duties to be discharged by them, as such
66 Board, this action ought not to be maintained, because it was brought before they had any opportunity to discharge any of such duties or act in the matter of a general revision of the schedule of rates, made necessary by said Act of 1905.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's bill of complaint, or amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

Afterwards, to wit, on the 2nd day of December, 1905 the Joint and Several Answer of Abernathy Furniture Company, et al. was filed. Said Answer is in words and figures as follows:

67 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

The Joint and Several Answer of the Defendants Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter to the Bill of Complaint of the Kansas City Southern Railway Company, Complainant.

These defendants respectively, now and at all times hereafter saving to themselves and each of them all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said billl contained, for answer thereto or to so much thereof as these defendants and each of them are advised it is material or necessary for them and each of them to make answer to, answering, say, each one of them for himself or itself:

I.

They admit the averments contained in paragraph I of said bill of complaint.

II.

As to whether said Act of 1905 is unconstitutional for any reason these defendants have no knowledge, information or
68 belief. All the other averments of paragraph II of said bill of complaint, these defendants admit.

III.

They admit each and every of the averments contained in paragraph III of said bill of complaint, except in this respect: Neither of these defendants has any knowledge, information or belief as to the duties which the Railroad Commissioners or the Attorney General are required by law to do or perform.

IV.

They admit the averments contained in paragrapph IV of the bill of complaint, except in this particular: They have no knowledge, information or belief as to whether they or any one of them represents any class of shippers.

V.

They admit all the averments contained in paragraph V of the bill of complaint, with these exceptions, to-wit: They have no knowledge, information or belief as to what the statutes of the State provide in respect of the duties of the Railroad Commissioners, or of any prosecuting attorney or of the Attorney General.

VI.

They admit each and every of the averments of paragraph VI of the bill of complaint.

VII.

They admit that the legislature of the State of Missouri, at its session of 1905, passed the act called in said bill of complaint, the Act of 1905.

69 As to whether shippers along the line of complainant's railroad are numerous, or daily engaged in making or preparing shipments of freight of the special classes designated in the Act of 1905, these defendants have no knowledge, information or belief.

They deny that they were intending or proposing to institute against the complainant any suit whatever to recover of the complainant any damages or any attorneys' fees.

They have no knowledge, information or belief as to whether any other shipper is interested with these defendants, or any of them, and they deny that they, or any one of them, should defend for any such person.

As to each and every other allegation contained in said paragraph VII of the bill of complaint, these defendants say that they have no knowledge, information or belief.

VIII.

As to the truth of the averments and of each of them contained in paragraph VIII of said bill of complaint, these defendants say that they have no knowledge, information or belief.

IX.

These defendants have no knowledge, information or belief as to the truth of the averments or any of them contained in paragraph IX of the bill of complaint.

X.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph X of the bill of complaint.

XI.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XI of the bill of complaint.

70 XII.

These defendants have no knowledge, information or belief as to the truth of the averments, or any of them, contained in paragraph XII of the bill of complaint.

XIII.

These defendants, further answering, say that none of them are proper parties defendant to the said bill of complaint and that each one of them has been improperly joined as a defendant herein; that there is no equity in said bill as against any one of them, and that in any event no costs ought to be adjudged herein against any of them.

[illegible] defendants deny that the complainant is entitled to any relief against these defendants, or any of them without this, that any other matter, cause or thing in the complainant's said bill of complaint or amendments thereto contained, material or necessary for these defendants to make answer unto, and not herein or hereby [illegible] traversed, confessed, traversed and avoided or [illegible] to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and [illegible] in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SAMUEL C. LADD,
Of Counsel.

It is [illegible] to avoid unnecessarily encumbering the record it is agreed that admissions, denials and averments of want of knowledge, information and belief, contained in the foregoing answer, shall be taken and considered in every stage of this suit, with the same force and effect as if such admissions, denials or averments had been mentioned specifically and in the language of the bill of complaint, the allegations thereof, which they are respectively intended to meet; that such admissions, denials and averments as to [illegible] of allegations, as a whole, contained in the bill of complaint, shall have the same force and effect as if each of such allegations had been specifically referred to in the language of said bill of complaint.

FRANK HAGERMAN,
Solicitor for Complainant.
HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SAMUEL C. LADD,
Of Counsel.

[illegible] court, on the 17th day of February, 1906, Replications [illegible] were filed. Said Replications are in words and figures [illegible]:

72 In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

S. W. MOORE,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Said Defendants.

73 In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the

manifold errors, uncertainties and insufficiencies of the answer of the said defendant, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court shall direct, and prays as in and by its said bill it hath already prayed.

S. W. MOORE,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Said Defendant.

74 In the United States Circuit Court for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

Replication of Complainant to the Answer of Abernathy Furniture Company, Kemper Grain Company and George W. Witter, Shippers.

This replicant, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication thereunto saith that it doth and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant and that the answer of the said defendants is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable Court

shall direct, and prays as in and by its said bill it hath already prayed.

S. W. MOORE,
FRANK HAGERMAN,
Solicitors for Complainant.

Received a copy of the foregoing replication, and it may be filed as of proper time.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for Said Defendants.

75 Afterwards, to-wit, on the 26th day of February, 1906, a Motion to Refer case to a Master or appoint an Examiner was filed. Said motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad Commissioners of the State of Missouri; Herbert S. Hadley, as Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter, Defendants.

The defendants, John A. Knott, Joseph P. Rice and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and Herbert S. Hadley, Attorney General of the State of Missouri, pray and move the court to make an order referring this cause to one of the standing Masters of the court or to a special Master to be appointed by the court, under proper directions therefor, to take the evidence herein and report the same to the court, with or without findings of fact by such Master, with all convenient speed, or an order appointing an examiner to take the testimony in the cause and return such testimony into court with all convenient speed.

HERBERT S. HADLEY.
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
Of Counsel.

76 Afterwards, to-wit, on the 27th day of February, 1906, a motion for oral hearing in open court was filed. Said motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, and Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

No. 2989.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2990.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2991.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

77 No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 2999.

QUINCY, OMAHA AND KANSAS CITY RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3000.

THE WABASH RAILROAD COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY, Complainant,
vs.
SAME, Defendants.

Motion.

Complainant in each one of the above entitled causes moves the court to set this case down for hearing upon evidence to be adduced orally in open court on final hearing.

FRANK HAGERMAN,
Solicitor for Complainants.

The above motion may be treated as if separately made and filed in each of above cases, and due and timely notice thereof is acknowledged.

HERBERT S. HADLEY,
JOHN KENNISH,
SANFORD B. LADD,
Solicitors for the Answering Defendants.

79 Afterwards, to-wit, on the 5th day of March, 1906, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3001, 3002, 3003, 3004, and 3006.

Order.

The application, in the nature of a motion, of the complainants for an oral hearing in open court of the evidence herein and the motion of the defendants for a reference to a Master or the appointment of an Examiner to take the testimony herein, having been submitted to the court, and the causes being at issue, the court decides to refer the same to a Special Master.

It is accordingly ordered that the above numbered causes be, and they are hereby, referred to Frank L. Scofield, Esq., as Special Master, with directions to take the evidence orally on the issues involved, and to report his findings of facts thereon to the court at the earliest time practicable, together with the evidence in the causes.

(1) He shall so hear, and only until the court otherwise orders, such above numbered causes as the parties by their counsel—

80 Afterwards, to-wit, on the 11th day of June, 1907, a motion for leave to file amended and supplemental Bill of Complaint was filed. Said motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3001, 3002, 3003, 3004, and 3006.

Motion.

Now comes complainant in each of the above entitled causes and moves the court for leave to file an amended and supplemental bill

seeking to enjoin the enforcement of the various acts of the legislature regulating rates adopted at the session in 1907, and making as additional parties defendant H. R. Oglesby, Railroad Commissioner, and the county judges and treasurers of the counties through which each of the complainant's lines run, together with citizens traveling upon the road of each complainant as passengers, all as will be more fully shown by the amended and supplemental bill to be presented upon the hearing of this motion.

FRANK HAGERMAN,
Solicitor for Complainants.

81 Afterwards, to-wit, on the 13th day of June, 1907, the following restraining order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. —.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 13th, 1907, asked pending a hearing of the application to file an amended and supplemental bill, the general form of which has been submitted to the court the right to temporarily file same and for a restraining order, but in as much as said application to file the bill for a temporary injunction has been set and noticed for hearing upon June 14th, 1907, at the first time convenient to the court, and it appearing to the court that it is desirable that a full argument be had after notice, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the court's own motion, ordered that until further order herein the complainant, its officers, agents and employés be and they are hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from com-
82 plying with said acts, and the application for a restraining order will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

83 Afterwards, to-wit, on the 14th day of June, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RY. CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

The complainant upon this June 14th, 1907, presented its amended and supplemental bill, and asked leave to file the same and for a restraining order or temporary injunction. The Court was advised by the Assistant Attorney General, who appeared, that the Attorney General, is absent and desired to be heard, and in the meantime that suits were this day by the Attorney General instituted in the Circuit Courts of the State to require the various railroad companies of the State to put in force the rates fixed by the acts of the Legislature mentioned in the bill. It is thereupon ordered that the matter be set down for hearing upon the 15 day of June, 1907, at 2 o'clock p. m., and the supplemental bill herein shall be deposited with the Clerk. And it appearing to the court that it is desirable that a full hearing be had of the various matters, yet that great harm might be done and much confusion arise if the status quo should be changed, and that it is to the best interest of the public and all parties interested that such status quo should be maintained until such hearing, it is therefore, upon the Court's own motion, again ordered that until further order herein the com-
84 plainant, its officers, agents, and employés be and they are hereby restrained from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill and from complying with said acts, and the application for a restraining order and temporary injunction will be heard with that for leave to file said amended bill.

(Signed) SMITH McPHERSON, *Judge.*

85 Afterwards, to-wit, on the 15th day of June, 1907, a Notice was filed. Said notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Notice.

To Defendants and their counsel:

Complainants will at the court room at Kansas City, Missouri, upon June 14th, 1907, at ten o'clock A. M., or as soon as counsel can be heard, ask leave of court to file an amended and supplemental bill in each of the foregoing cases, in substantial form shown by copy hereto attached, and at the same time ask for a temporary injunction.

FRANK HAGERMAN,
Solicitor for Complainants

Received copy of this notice June 11, 1907
HERBERT S. HADLEY,
Solicitor for Defendants.

86 Afterwards, to-wit, on the 17th day of June, 1907, the following order was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing, process shall be issued so that if the court hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill, to the end that each defendant as to each of said acts of 1907 be restrained as
87 effectually as the defendants were enjoined by the temporary injunction heretofore issued herein as to and in connection with the act of 1905. By consent of complainant, the injunction bond heretofore filed shall stand as applicable to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion, shall remain in force until June 19th, 1907, at six o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its waybills for state freight.

(Signed) SMITH McPHERSON, *Judge.*

88 Said Amended Bill so filed on the 11th day of June, 1907, is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

89 *Complainant's Amended and Supplemental Bill.*

To the Honorable Judges of the Circuit Court aforesaid:

Your orator, by leave of court, brings this, its amended bill, and thereupon avers:

1. Upon the 16th day of June, 1905, it filed herein against the defendants in the above entitled case its original bill, (reference to which is now made the same as if copied herein), seeking to enjoin as illegal, unconstitutional and confiscatory the enforcement of the provisions of an act of the legislature of the State of Missouri (herein called the "Act of 1905") seeking to fix certain maximum freight rates.

2. The said legislature also passed in 1905 an act approved April 14, 1905, in words and figures as follows:

"Corporations Private, Railroad Classification, Charges, Commissioners.

An Act to Amend Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, Entitled 'Railroad Classification, Charges, Commissioners,' by Adding a New Section Thereto, to be Known as Section 1195*a*.

SECTION 1. Fixing charges for carrying undressed stone, crushed rock and building or paving brick.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That Article IV, Chapter 12, of the Revised Statutes of Missouri of 1899, entitled 'Railroad Classification, Charges, Commissioners,' be and the same is hereby amended by adding a new section, thereto, to be known as Section 1195*a*, to read as follows:

SECTION 1195*a*. No individual, company or corporation owning, operating, managing, or leasing any railroad or part of a railroad in this State, shall charge for or receive for carrying a carload of forty thousand pounds of undressed stone, sand or building or paving bricks more than forty cents per ton for the first ten miles, twenty cents per ton for the second ten miles, or more than five cents per ton for each additional ten miles, and any excess in weight shall be charged for at the same rate per ton as for an even carload.

Approved April 14, 1905."

3. Since the filing of said original bill and upon or about January 1, 1907, the office of the said Joseph P. Rice, as a railroad and warehouse commissioner expired by limitation of the time for
which he was elected and H. R. Oglesby has been duly
90 elected and qualified as his successor, and is now acting as such. It is, therefore, proper that he should be made a party defendant hereto.

4. Each of the railroad companies operating railroads in the State of Missouri at the same time filed in this court original bills to the same purport and for the same purpose, against said members of the

Railway and Warehouse Commissioners and the Attorney General and certain shippers upon the lines of its road. Such proceedings were had therein that temporary injunctions were issued, the causes were put at issue and duly referred to the Honorable Frank L. Scofield to take certain proofs and make certain findings of fact. The parties agreed that before taking the evidence in all the cases, they would first take that in three of them, temporarily suspending the taking of further testimony in the others. In accordance with said agreement the evidence was taken in the three cases instituted by the Missouri Pacific, Wabash and Chicago, Burlington & Quincy Railway Companies, and the said causes are now ready for submission to the Special master upon the original bills so filed, and have been set for argument before him upon June 18, 1907.

5. The Governor of the State, in giving his written reasons for approving the Act of 1905, indicated that it was with some reluctance that he signed same, expressly stating that "the rate on live stock seems unjust." So at the time of submitting his biennial general message to the 43rd General Assembly of the State, he called attention to the litigation aforesaid, and suggested a modification and amendment of the law to meet fatal defects therein. Thereafter, on February 27, 1907, he sent a special written message to the legislature in which, among other things, he said in reference to the Act of 1905:

"The statute enacted by the last General Assembly is defective in the penalty clause, which applies only to railroads. The penalty should be made to apply to persons, corporations, and partnerships. The cattle clause should be corrected in the light of the testimony adduced in the freight litigation so as to fix these rates at an amount that will stand the test of the judicial crucible."

6. Pursuant to this request and the acknowledgment thus made of the invalidity of the existing law, the enforcement of which was sought to be enjoined by the original bill, the legislature passed an act (herein called the Act of 1907) which will take effect on June 14, 1907, in words and figures as follows:

91 "Corporations, Private: Railroads—Freight Charges.

An Act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend Chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd General Assembly, approved April 14, 1905, entitled 'An act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto, to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections,

to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:

SECTION 1194. Classification and charges for carrying freight in car load lots.

SECTION 1194*a*. Penalty for violation.

SECTION 1194*b*. Not to relieve railroad from complying with other laws.

SECTION 1194*c*. Repealing conflicting acts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That sections 1194, 1194*a* and 1194*b*, of an act of the 43rd general assembly, approved April 15, 1905, concerning railroad classifications, charges, commissioners, and providing for a penalty for a violation thereof, said sections being enacted in lieu of section 1194, chapter 12 of the Revised Statutes of Missouri, 1899, in "corporations, private," and section 1195*a* of an act of the 43rd general assembly, approved April 14, 1905, concerning railroad classifications, charges, commissioners, fixing charges for carrying undressed stone, crushed rock and building or paving brick, be and the same are hereby repealed, and the following to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1 of said Revised Statutes are enacted in lieu thereof.

SECTION 1194. No individual, company or corporation owning, operating, managing or leasing any railroad or part of rail-
92 road, designated in section 1191 as in classes A, B, or C, shall demand, charge or receive a greater or higher rate for carrying from initial to terminal points in this state articles named in the several classes and the commodities herein designated than is hereinafter provided for, namely: Class D, in car loads of 40,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles, or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class E, in car loads of 24,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class F, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class G, in car loads of 30,000 pounds minimum weight, not exceeding five cents per one hundred pounds for the first twenty-five miles, and not exceeding one-half cent per hundred pounds

for the second twenty-five miles or fractional part thereof, and not exceeding one-half cent per hundred pounds for each additional twenty-five miles or fractional part thereof. Class H, in car loads, in common cars, measuring inside from 29 feet to and including 30 feet and 6 inches in length (to be known as standard cars), not exceeding $8.00 per car load for the first twenty-five miles, and not exceeding $4.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof of over twelve miles. For the carriage of any of the articles comprising class H, in cars of other lengths for the distances above specified, the following percentages of the foregoing rates per car load shall not be exceeded namely: In cars of length less than 29 feet, 94 per cent; in cars of length over 30½ feet to and including 32 feet, 104 per cent; in cars of length over 32 feet to and including 33 feet and 9 inches, 107 per cent; in cars of length over 33 feet and 9 inches to and including 36 feet, 110 per cent; in cars of length over 36 feet to and including 38 feet, 113 per cent; in cars
93 of length over 38 feet to and including 40 feet, 116 per cent; in cars of length over 40 feet to and including 42 feet, 125 per cent; in cars of length over 42 feet to and including 44 feet, 135 per cent; in cars of length over 44 feet, 140 per cent of the rates herein specified for cars of the standard length of 29 feet to and including 30 feet and 6 inches shall not be exceeded. All the foregoing lengths to be taken by inside measurements. Class I, in car loads of 20,000 pounds minimum weight, not exceeding $14.00 per car load for the first twenty-five miles, and not exceeding $2.00 per car load for the second twenty-five miles or fractional part thereof, and not exceeding $2.00 per car load for each additional twenty-five miles or fractional part thereof. For a car load of 40,000 pounds of minimum weight, undressed stone crushed rock, sand, railroad ties, cordwood, building or paving brick, not exceeding 40 cents per ton of 2,000 pounds to the ton for the first fifty miles or fractional part thereof, and not exceeding five cents per ton per car load for the next ten miles or fractional part thereof, and not exceeding 5 cents per ton per car load for each additional ten miles or fractional part thereof. In computing the rate of freight, according to the provisions of this article, the distance shall be computed from the point where it is received to the point of destination in the state, notwithstanding it may pass from one road to another.

SECTION 1194*a*. Any individual, company or corporation owning, operating, managing, or leasing any railroad, or part of railroad, designated in section 1194, or any officer, agent, representative or employee thereof who violate the provisions of section 1194, shall be adjudged guilty of a misdemeanor and on conviction shall be punished by a fine of not to exceed $5,000.00; Provided, that the money received from any fine under the provisions of this act shall be paid into the school fund in the county in which the case is prosecuted.

SECTION 1194*b*. This act shall not have the effect of relieving any

person, partnership or corporation, owning or operating any railroad in this state from any liability or penalty heretofore incurred for failure to comply with any law of this state.

SECTION 1194*c*. All acts and parts of acts, and all rules and regulations, freight schedules, classifications and groupings by railroad companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act are hereby repealed and declared void.

94 Approved March 19, 1907."

By this Act an attempt was made to comply with the request of the Governor and to repeal the said Act of 1905, together with that mentioned in paragraph 3 hereof, with the exception that no penalty or liability incurred should be affected by such repeal, the purpose and intention of defendants being to attempt to enforce against your orator all penalties which accrued if the said acts are held to be illegal.

7. In addition thereto, the legislature in 1907 passed certain acts which will take effect upon June 14, 1907, being in words and figures as follows:

"Corporations, Private: Railroads—Freight Charges.

An Act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899 by adding a new section thereto to be known as section 1195*a*, and relating to freight charges and classifications.

SECTION 1. Fixing freight charges on fruits.
SECTION 2. Inconsistent acts repealed.
SECTION 3. Penalty for violation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That article 4, chapter 12, of the Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' be and the same is hereby amended by adding a new section thereto, to be known as section 1195*a*, which said section shall read as follows:

SECTION 1195*a*. No individual, company or corporation owning, operating, managing or leasing any railroad or part of railroad in this state, shall charge for or receive for carrying apples and pears in car loads of 24,00(0) pounds minimum weight, more than six cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not more than one cent per hundred pounds for each additional twenty-five miles or fractional part thereof. For strawberries, peaches, grapes and other berries in car loads of 18,000 pounds, minimum weight, not exceeding fifteen cents per hundred pounds for the first twenty-five miles or fractional part thereof, and not exceeding two cents per hundred pounds for each additional twenty-five miles or fractional part thereof.

SEC. 2. All acts and parts of acts and all rules and regulations,

freight schedules, classification(s) and grouping(s) by railroad(s) companies, or the railroad and warehouse commissioners of this state, in conflict with the provisions of this act, are hereby
95 repealed and declared void.

SEC. 3. Any individual, company or corporation owning, operating, managing or leasing any railroad or part of a railroad in this state, violating the provisions of this act, shall, on conviction, be adjudged guilty of a misdemeanor, and subject to a fine of not to exceed one thousand dollars for each offense.

Approved March 19, 1907."

"Corporations, Private: Railroads.

An Act to provide transportation on railroads for the shippers of freight in this state in carload lots.

SECTION 1. Railroads to issue to certain shippers transportation.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. Whenever any railroad company or corporation doing business within the limits of this state shall receive any live stock to be shipped over the said road or roads by carload lots, said corporation shall, in consideration of the price paid for said carload lots, issue to the shipper, his agent or employee, at the time of making out the contract or bill of lading, a round trip ticket to and from said points designated in said bill of lading, without further expense to said shipper, provided that the points of destination are within this state, and in case said point of destination is without this state, then said railroad corporation shall issue to such shipper, his agent or employee, a round trip ticket to a point within this state, nearest to the point without this state to which said shipment of live stock is shipped: Provided, that in case said shipper shall ship more than one carload at any one shipment the said railroad corporation shall not be compelled to give to said shipper more than one round trip ticket with such shipment, which said ticket shall be good on the freight train on which said stock is shipped, and on all trains on said road, carrying passengers on the return trip, and shall be good for a period of ten days, and any railroad company or corporation wilfully violating the provisions of this section, or which shall fail, neglect or refuse to furnish and deliver such ticket to such shipper, his agent or employee, shall forfeit and pay, as a penalty, to said shipper, not less than three hundred dollars nor more than five hundred dollars, to be recovered by civil action in any court of competent jurisdiction.

96 Approved April 4, 1907."

8. All the averments of the original bill apply to the said Act of 1907 and also to each of the acts mentioned in paragraph 7 hereof, except that if for the classes of freight mentioned in the

said Acts of 1907 alone, or in all the Acts of 1907, your orator should charge the maximum rate therein authorized and practically capable of being charged, its total gross receipts from state traffic would be reduced in a very large sum, which though differing in items would not be as a whole substantially less than that mentioned in the original bill as to the Act of 1905. Each of said freight Acts of 1907, is violative of the provisions of the Constitution to the same extent as was alleged as to the Act of 1905. But the freight Acts of 1907 did not so correct the evils of the former laws as set forth in the original bill, and the rates were thereby fixed at amounts that were unreasonable and confiscatory, and less than the cost of the service.

9. The Governor in calling for the passage of said Act of 1907, and the legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905, which they conceived had in this litigation been proved to be unreasonable and confiscatory and could not be enforced. Notwithstanding this, the rates as finally so fixed, considered alone, were not upon such a basis as would return any reasonable or fair compensation to the complainant upon the value of that portion of its property devoted to such use. Even if the laws in existence in 1905 relative to passenger fares, had remained in force, still the freight rates as fixed by the said Acts of 1907 would have been unreasonable and confiscatory, and would not have given any just return upon the value of that portion of your orator's property as a whole devoted to state traffic. However, the legislature of the state, without any fixed or definite knowledge upon the subject of rates, erroneously conceived that if the increase as aforesaid in the freight rates were necessary and were made, there could be a general equalization of rates by a decrease in the passenger rates and so in substance they could legally overcome and offset any advantage from the increase in freight rates by decreasing the maximum rates to be charged for state passenger traffic about thirty-three and one-third per cent, and thus, while defeating pending litigation, the public as a whole would not be the loser. The result was that at the same session and as part and parcel of one transaction, and substantially as one law, and to accomplish such purpose, there was passed and the Governor approved, an act herein called the "Passenger Act", which, if valid, will take effect on June 14,
97 1907. The same reads as follows:

"Corporations, Private: Railroads—Passenger Rates.

An Act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled, 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*.

Section 1191. Classification of railroads.
Section 1192. Passenger Charges regulated.

Be it enacted by the General Assembly of the State of Missouri, as follows:

SECTION 1. That all of sections 1191 and 1192 of chapter 12, article 4 of the Revised Statutes of Missouri, 1899, be and the same are hereby repealed and three new sections be enacted in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*, so that said sections shall read as follows:

SECTION 1191. Roads classified. All railroads in the state of Missouri are hereby divided into four classes, to be known as class A, class B, class C, and class D. Class A shall include all through or trunk line railroads and all branch roads owned, leased, controlled or occupied by such through or trunk line railroad companies or corporations. Class B shall include all other railroads or parts of railroads owned, leased, controlled or occupied, or which may hereafter be owned, leased, controlled or occupied, either wholly or in part, by any trunk line company or corporation. Class C shall include all other railroads of a greater length than forty-five miles. Class D shall include all roads less than forty-five miles in length not owned, leased, controlled or occupied by any trunk line company or corporation.

SECTION 1192. Passenger charges regulated.—Any individual, company or corporation owning, operating, controlling, or leasing any railroad or part of a railroad in this state, in the several classifications as herein prescribed, shall be limited to a compensation per mile, for the transportation of any person with ordinary baggage not exceeding one hundred pounds in weight, as follows: In classes A, B, and C, not exceeding two cents per mile, and in class D, not exceeding four cents per mile: Provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under than one-half of
98 the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided.

SECTION 1192*a*. Any individual, company or corporation, or any agent or officer thereof, who shall violate any of the provisions of section 1192 of this act, shall be deemed guilty of a misdemeanor, and upon conviction, shall pay a fine of not less than one hundred nor more than five hundred dollars.

Approved February 27, 1907."

10. All the averments of the original bill apply to said Passenger Act. It is violative of each constitutional provision mentioned, and subject to each objection made, in the original bill to the Act of 1905, and all the facts there averred as to why the Act of 1905 should be held to be void and action thereunder restrained, are not only true as to the Acts of 1907, but also as to said Passenger Act. If enforced, it will reduce the earnings of your orator from said passenger business in the practical and ordinary operation of its road, substantially one-third. The state passenger earnings for the year 1906 were in the aggregate substantially seventy six thou-

sand one hundred and eighty & 80/100 dollars ($76,180.80) and yet, if the Passenger Act as aforesaid had been applied thereto, said earnings would have been reduced at least to the sum of Sixty thousand one hundred and thirty two & 48/100 dollars ($60,132.48) or an annual loss of Sixteen thousand and forty eight and 32/100 dollars $16,048.32). The property of your orator in the state is used as a whole both for state and interstate freight and passenger business, and, as such, is quite valuable. The value of that portion devoted to the carriage of state business considered as a whole, or separately, as to the passenger business only, is such that in either case the reduction in rates by said Passenger Act would not only fail to make any reasonable return on such valuation, but would cause such business to be done at an actual loss.

11. The said Passenger Act was passed for the avowed purpose of reducing the state passenger rates of your orator so as to offset and overcome a supposed increase of certain of the state freight rates made under the Act of 1907, and the attempt was made to frame each act so as to avoid the injunctive relief in this and in each action heretofore instituted by the other railroad companies operating lines in Missouri. As your orator is informed and believes, the state and defendants now unjustly and
99 improperly claim that since up the face of these acts provision is only made for general penalties, there is no remedy by injunction; that the original bill can no longer be maintained, and that the state through its officers is entitled to have enforced the various statutory penalties for each shipment made and each passenger carried at a rate in excess of that fixed by the freight Acts of 1907 and the said Passenger Act, as well as penalties under the abandoned Act of 1905.

As to the said contentions, your orator respectfully submits:

(*a*) Such view if adopted, would result in a multiplicity of suits, the harassment of your orator, and tedious and expensive litigation, because if an injunction be not herein granted, and said acts be not complied with, many suits and prosecutions will be brought and many fines and penalties imposed and no opportunity will be afforded to your orator to present its claim of the unconstitutionality of said act and the confiscatory nature of the rates fixed. Such an inquiry involves the examination of long and tedious accounts, the study of books and papers and an expert knowledge of the trier of fact, none of which could be properly had in the many trials to be had in a court of law to enforce the penalties. Hence the result would be pending the inquiry, your orator would be required to put in and enforce said rates to its irreparable damage, because it would be compelled, pending the litigation, to carry traffic at the reduced rates with no practicable way of recovering the difference between the rates now charged and as so reduced.

(*b*) The real purpose of the original bill was to determine whether that portion of the property of your orator devoted to state business could, if the Act of 1907 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory. Upon

the trial of the three cases heard by the special master, such was the theory adopted by both parties, and the proofs were by both of them directed to that end. In view of this situation, it is respectfully submitted that the full determination of all questions of rates in the pending cases can not be defeated or impaired by the repeal of the state legislature of the particular act questioned by the original bill and the passage of another and different act in such form as to prevent any adequate relief from a court of equity and to remit a complainant to a defense in numberless actions of law to recover penalties. But if the rights of the parties should be ascertained by a court of equity, this can be done
100 adequately through the injunctive process, surrounded and controlled by such conditions as may be proper and just in the premises.

(*c*) It would be unjust and inequitable to permit officers of the state to claim that the validity of an act alleged to be confiscatory in its nature should be determined in a way other than would afford a full and fair hearing, which can only be by the processes of a court of equity. In order that there may be the fullest and fairest hearing of the controversy, your orator consents that any state officer, or any private person or corporation may appear herein, and show, if they can, why the rates fixed in the acts aforesaid are lawful, reasonable, or enforcible, and that the court may make any reasonable order to protect the public and speed the hearing.

(*d*) Each of the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney General, as stated in the original bill, applies to the Acts of 1907, and the Passenger Act aforesaid, so that even as an original bill, this proceeding could be maintained.

(*e*) The constitution of the state provides that all penalties such as are attempted to be prescribed for the violation of the acts herein mentioned go to the school-fund of the various counties, and the statutes of the state impose the special duty of collecting the same and preserving and investing the proceeds thereof, upon the county court and the treasurers of the respective counties of the state. Joseph M. Patterson, Charles E. Moss, George Dodd are the judges of the county and Arthur C. Warner is treasurer and each is a resident and citizen of the county of Jackson *County,* Missouri, through which the line of your orator passes, and from and to which there is transported a very large part of the state and passenger traffic, the maximum rates for carriage of which are fixed by said Acts of 1907 and said Passenger Act. Each of said Judges and said treasurer is hereby made a defendant. Each proposes and intends and will, unless restrained herein, seek to enforce and collect the penalties provided for in the said acts. In view of the fact that the line of your orator's road is not confined to one county, it is inconvenient, impracticable, expensive, and hence, unnecessary to make the county judges and the treasurer of each county parties hereto, but such as are named can be, and are sued as a class so that others similarly situated may, if they desire, appear herein and be heard upon their own behalf or through those now made parties, or, if necessary, be

brought in by process of court and required to make defense.

101 (f) D. J. Dean and W. D. Corbin are citizens and residents of Jackson county, Missouri, who constantly travel over your orator's road, who have demanded and supported the passage of the Passenger Act aforesaid, and threaten to and will seek to enforce its provisions unless the rates therein fixed are established and put in force. They are hereby made defendants, and they represent a class of passengers and travelers so numerous that it is impracticable to join them all and those named are made defendants herein for the purpose of determining, as against your orator, the rights of the entire traveling public under the said Passenger Act.

12. The rates fixed by each the said Acts of 1907 and said Passenger Act and as a whole are so unreasonable and confiscatory that a compliance therewith will force an unreasonable reduction and confiscation of your orator's entire revenue contrary to the provisions of the fourteenth amendment to the constitution of the United States and provisions of the constitution. Besides this, to enforce the rates so fixed in any of said acts would necessarily affect the interstate rates upon the same commodities. Owing to the peculiar geographical location of the state of Missouri the state rates necessarily affect all interstate rates upon the same commodities and travel and this results as a practical and unavoidable matter in the conduct of business affairs, the location of markets, business houses, the extent of territorial distribution from the various cities in the state and the necessities of travel. In addition to this some of the chief lines of railroad in Missouri in running to and from points therein, pass out of the state so as to make any transportation between such points interstate commerce. Hence when a state rate between such points when lines wholly within the state is fixed lower than the interstate rate the companies whose transportation is interstate must meet that rate or carry none of the traffic. Such traffic constitutes a very substantial portion of the entire state traffic. Congress has attempted to legislate upon the subject of interstate rates, and since, as a matter of fact, none of said state rates can be enforced without affecting interstate rates, all of the said legislative acts are unconstitutional and void and of no effect and violative of section 8, article 1 of the Constitution of the United States.

In consideration whereof, and forasmuch as your orator is remediless in the premises and by the strict rules of the common law can only have relief in a court of equity where matters of

102 this kind are properly cognizable and relievable, your orator prays that: (1) Each of the said Acts of the Legislature of Missouri of 1907, herein set forth, including said Passenger Act, be declared unconstitutional, unenforcible and not binding upon your orator. (2) All the relief asked in the original bill as to the Act of 1905 be granted as to the said Acts of 1907. (3) The temporary injunction heretofore issued herein be extended against the defendants to the original and to this bill so as to cover and include any claim or right under or by virtue of any of said freight Acts of 1907 and said Passenger Act and be made permanent. (4) Your orator have such other and further relief as is just and equitable.

And may it please your Honors to grant unto your orator a writ of subpoena of the United States, issuing out of and under the seal of this honorable court directed to each of the said defendants, including each of those hereby and herein made a party defendant, commanding them and each of them on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court then and there to answer, but not under oath, an answer under oath being expressly waived, all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against them in the premises.

And your orator will ever pray, etc.

S. W. MOORE,
Solicitor for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Jackson, ss:

I, J. A. Edson, upon oath say that I am President of complainant in above entitled bill, and as such am familiar with the traffic operations of said company, and all the matters and things mentioned in the said bill which I have read. I know the contents thereof and same are true of my own knowledge, except as to those matters therein stated upon information and belief, and as to those matters, I believe them to be true.

J. A. EDSON.

Subscribed and sworn to before me this 13th day of June, 1907. My commission expires October 10th, 1908.

[SEAL.] CLARENCE R. HALL,
Notary Public.

Afterwards on the 25th day of June A. D. 1907, a writ of subpœna was issued.

103 Afterwards, to-wit, on the 15th day of July, 1907, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Order.

This cause coming on for hearing this July 15th, 1907, leave is hereby given to complainant to file an Amendment to Complainant's

Bill of Complaint. The application for a temporary injunction against Herbert S. Hadley, Attorney General of the State of Missouri, from prosecuting the suit in the state court which he has instituted against the complainant is continued until the expiration of the ninety days' test heretofore ordered, unless the court should hereafter set the same down for hearing at an earlier date.

(Signed) SMITH McPHERSON, *Judge.*

104 Afterwards, to-wit, on the 16th day of July, 1907, an amendment to complainant's bill of complaint was filed. Said amendment is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Amendment to Complainant's Bill of Complaint.

The complainant, by leave of court, presents this its amendment to the bills heretofore filed herein, and respectfully shows to the court that it desires to, and does hereby present the matters and things hereinafter set forth, as paragraphs 13, 14, 15, 16, 17, 18, 19, 20, and 21, of the amended and supplemental bill heretofore filed herein, to be inserted therein immediately following paragraph 12 and preceding the prayer thereof. Thereupon complainant avers:

13. It hereby refers to the original and to the amended and supplemental bills herein, with the same force and effect as if copied herein.

14. Conceiving, and the defendants insisting, that an additional amended and supplemental bill should only be filed after notice, and upon order of court, and there being no judge of the court within the district at the time, the complainant filed herein, on June 11th, 1907, its written application for leave to file an amended and supplemental bill, reference to which application is made the same
105 as if copied herein. On the same day, there was served upon counsel for defendants in the original bill, and accepted by them, a written notice, together with a copy of the form of the said amended and supplemental bill, which notice recited that the application to file same, and for a temporary injunction would be presented to the court upon June 14, 1907, at the opening of the court at ten o'clock a. m. Said notice, the acceptance and evidence of service thereof, and form of bill, are upon file and are hereby referred to with the same force and effect as set out herein. On June 13, 1907, at ten o'clock a. m., there then being a judge of the court within this district and court being open, complainant

presented and asked, pending a hearing of the application to file its amended and supplemental bill the general form of which was then submitted to the court the right to temporarily file same, and for a restraining order, whereupon the court made an order entered herein upon June 13, 1907, of its own motion in the interests of the public and of all parties, maintaining the status quo pending the hearing, and restraining complainant from putting in force the maximum freight and passenger rates provided by the legislative acts of 1907 mentioned in said bill, and from complying with said acts, reference to said order is now made as fully as if copied herein.

15. Afterwards, on June 14, 1907, Herbert S. Hadley, Attorney General of the State of Missouri, and one of the defendants herein, by his counsel, in flagrant disregard and contempt of the jurisdiction of this court, filed in the circuit court of Kansas City, Missouri, his two petitions in equity in the name of the state at his relation as Attorney General, against this complainant, one asking that the court by mandatory injunction require complainant to put in force the maximum freight rates provided by the said legislative acts of 1907 mentioned in the amended and supplemental bill, and to comply with said acts, and the other as asking the same relief as to the rates fixed by the Passenger Act of 1907. And at his solicita-
106 tion, the judge of said state court did, in each of said cases, *of* the same day, without notice, issue its restraining order returnable upon the 18th day of June, 1907, requiring the forthwith doing of such acts by this complainant.

Complainant asks leave to produce upon the hearing of this petition, certified copies of said proceedings in the state court, and refer to them as fully as if copied herein.

16. Thereafter at the time fixed in said notice, and upon June 14, 1907, at ten o'clock a. m., there was presented to this court the applications of complainant for leave to file said amended and supplemental bill and for a temporary injunction, and defendants asked a continuance of the hearing for one day, which the court granted, and upon its own motion ordered that said amended and supplemental bill should be deposited with the clerk (which was then and there done), that in the interest of the public and all parties the status quo should be maintained, and that complainant in the meantime and until the further order of court should be restrained from putting in force the maximum freight and passenger rates fixed by the legislative acts of 1907 mentioned in the said bill, and from complying with said acts. A reference to the said order is now made with the same force and effect as if copied herein. In the meantime the said restraining orders from the state court were served upon complainant. Thereafter, upon June 15, 1907, the said applications were argued by the counsel for the respective parties and by this court, taken under advisement.

17. Thereafter upon June 17, 1907, this court made and entered an order which, omitting title, is in words and figures as follows:

Order.

"This cause came on for hearing this 17th day of June, 1907, the parties appearing by their counsel in response to notice, and the court being fully advised in the premises, orders and adjudges:

1. Complainant's motion for leave to file an amended and supplemental bill is sustained and such leave is given, the same to be filed as of June 11th, 1907.

Upon such filing process shall be issued so that if the court
107 hereafter decides that the ends of justice require, and the rules of equity permit, the said bill may be treated as an amended, supplemental, ancillary, dependent or original bill.

To said bill, each of the parties named therein shall be and is hereby made a party.

2. Complainant's application for a temporary injunction is, as to the maximum freight laws of 1907, sustained. Until the further order of the court herein, the defendants and each of them are enjoined from doing any act, attempting to recover any penalty, seeking to enforce or having enforced, or asserting any claim or right under or by virtue of either of the maximum freight rate acts of 1907 mentioned in said amended and supplemental bill to the end that each defendant as to each of said acts of 1907 be restrained as effectually as the defendants were enjoined by the temporary injunction heretofore issued as to and in connection with the act of 1905. By consent of the complainant, the injunction bond heretofore filed shall stand as applicable, to this order, the same as if it were executed and filed this day.

3. As to the passenger act of 1907, the order heretofore entered upon the court's own motion shall remain in force until June 19th, 1907, at 6 o'clock a. m., at which time the rates fixed by said act shall be put and kept in force for three months without prejudice to the rights of either party for the purpose of ascertaining more definitely the extent that experience will show that the rates under said act reduce or increase the earnings of complainant.

The court reserves the power, upon the application of any person interested, to hereafter make such further or other order upon this subject as it deems proper.

4. Pending the further hearing and final determination of this case, the complainant shall preserve and keep in existence its waybills for state freight.

SMITH McPHERSON, *Judge.*

Accordingly said bills were forthwith marked filed as of June 11, 1907, as in and by said order provided. Subpœnas have been duly issued as in and by said order provided, and served upon most of the defendants, and as to the others are in the marshal's hands for service and not yet returned, and complainant is not yet advised as to whether actual personal service has been had.

18. Thereafter upon June 24, 1907, the circuit court of Jackson Co. Missouri, upon the application of the said Attorney

General entered an order dismissing the case mentioned in paragraph 15 hereof which was filed against this complainant for a mandatory injunction to require it to put in force the maximum freight rates provided by the said legislative acts of 1907, and upon the same day the same court, upon the application of the said Attorney General, entered an order setting aside the restraining order issued in the case mentioned in the same paragraph to require it to put in force the maximum passenger rates fixed by the legislative
108 act of 1907 aforesaid, but did not dismiss the case, the Attorney General insisting that it should remain pending. He now threatens to and he will, unless enjoined herein, proceed with the trial and prosecution of the same on and after September 20, 1907, at the expiration of the ninety day test mentioned in the order hereinbefore set out.

19. The said state court has no jurisdiction in the premises and has no right or power to compel complainant by injunction to put in force the maximum passenger rates aforesaid, and any attempt so to do would deny to complainant the protection accorded to it by the fourteenth amendment to the Constitution of the United States, which it now claims. Such attempt to oust this court of its jurisdiction, is in contempt thereof, and as to it was and is futile.

20. With the exception hereinafter stated, the facts alleged herein in paragraphs 13 to 18 inclusive, are true as to each of the following railway companies in the state of Missouri; St. Louis & San Francisco; Atchison, Topeka & Santa Fe; St. Louis Southwestern; Chicago, Rock Island & Pacific; St. Louis, Kansas City & Colorado; Kansas City Southern; St. Louis & Hannibal; Missouri Pacific; St. Louis Iron Mountain & Southern; Missouri, Kansas & Texas; Chicago, Burlington & Quincy; Quincy, Omaha & Kansas City; Wabash; St. Joseph & Grand Island; Kansas City, Clinton & Springfield; Chicago Great Western; Chicago, Milwaukee & St. Paul, and Chicago & Alton. Each of said companies had at the same time filed in this court bills similar in nature to the original bill herein to enjoin the enforcement of the Acts of 1905, in which temporary injunctions had been issued and which cases are still pending and undetermined. Said exception is that the cases in the state court mentioned in paragraph 15 hereof against the St. Louis & San Francisco Railroad Company; St. Louis Southwestern Railway Company; St. Louis, Kansas City & Colorado Railway Company; St. Louis & Hannibal Railway Company; Missouri Pacific Railway Company; St. Louis Iron Mountain & Southern Railway Com-
109 pany; Missouri, Kansas & Texas Railway Company and the Wabash Railroad Company, were filed in the circuit court of St. Louis, Missouri, while those against the other companies were filed in the circuit court of Jackson County, Missouri, at Kansas City. With this exception, similar action to that herein averred was taken in each case pending in this court, and the Attorney General threatens to and unless restrained will, proceed to prosecute each of said cases in the state courts as hereinbefore alleged. As to several of said complainants, the restraining orders from the state courts were served while the parties were presenting said applications upon June 14.

21. The passenger act of 1907, and each freight act of 1907, is void and of no effect for that it is an attempt to deprive complainant of its property without due process of law, and denies to complainant the equal protection of the laws for reasons additional to those heretofore given, in that:

(*a*) Harsh and unreasonable penalties are provided with no provision for a test of the validity of the act, except at the risk of incurring such penalties which, if applied to each shipment of state freight or each passenger traveling on a state journey, over complainant's line, would within two years be greater than the value of complainant's whole property devoted to such use.

(*b*) It directly influences, affects and bears upon interstate freight and passenger traffic, and fixes and regulates the same for these reasons additional to those heretofore given:

(1) Many of the companies operate lines between the large cities of the state, some of which are wholly within the state and some of which go out of the state into Kansas and then back into this state. For illustration: The Kansas City, Clinton & Springfield Railway Company and the St. Louis & San Francisco Railroad Company are trunk lines between Kansas City, Missouri, and Springfield, Missouri, of substantially the same length; the line of the former between those points extending into and out of Kansas, so that all its carriers between said points *is* interstate; the other company has one line which in said course runs into and out of a portion of Kansas and another separate line between said points which extends wholly through Missouri so that the carriage between said points upon one line is interstate and upon the other, state. Between Joplin and Kansas City there are three trunk lines of substantially the same length, that of the Missouri Pacific Railway Company, between said points being wholly within the state and therefore all of its traffic is state, while the lines of the Kansas City Southern Railway Company and the St. Louis & San Francisco Railroad Company between said points extend into and out of Kansas, so that all the traffic between said points is interstate. Between St. Louis, Missouri, and St. Joseph, Missouri, there are two trunk lines, one of which is that of the Chicago, Burlington & Quincy Railway Company, which does not pass out of the state, so that the traffic between said points upon that line is wholly state, the other line is that of the Missouri Pacific Railway Company which in its course passes into and out of Kansas, so that the entire traffic between said points is interstate Between Kansas City, Missouri, and St. Joseph, Missouri, there are four trunk lines of substantially equal length, those of the Chicago, Burlington & Quincy Railway Company and the St. Joseph & Grand Island Railway Company are wholly within Missouri and all their traffic between said points is state; the lines of the Missouri Pacific Railway Company and of the Chicago Great Western Railway Company pass into and out of Kansas, so that the entire traffic thereon between said points is wholly interstate.

The said five cities are the largest in the state, their populations, according to the census of 1900 being, St. Louis 575,238; Kansas City, 163,752; St. Joseph, 102,979; Joplin, 26,023; Springfield, 23,267.

The traffic between said cities upon said lines is a very substantial part of the traffic of said lines and of the state; the
111 rates between the points as aforesaid, both for passenger and freight, upon those lines which are interstate, have been for years fixed at a reasonable sum which is much higher than the rates fixed by any of the acts of the legislature in question. If any of the rates mentioned in said acts be put in force between said points upon lines wholly within the state, each of the companies operating the lines which are interstate will necessarily be compelled to lower their rates to the same figure or else, as a matter of fact, none of the traffic between said points will be carried over its line.

(3) The large cities and populous communities of the state are upon its eastern and western borders; the main course of traffic through the state is east and west; all the railroads in the state either operate lines extending into other states, or into the state of Kansas adjoining Missouri upon the west, and Illinois adjoining it upon the east, or else have joint freight and passenger traffic arrangements with lines running into those states for interstate through carriage both of freight and passengers.

So far, pending the test of the passenger rate ordered by this court, it has been demonstrated and is the fact, that the interstate passenger rates are much higher than those fixed by the passenger act of 1907, so that passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa from points of interstate trip into Missouri For illustration a concrete case may be stated. From St. Louis to Kansas City is about 275 miles, thence to Topeka, Kansas, 67 miles, or a total of about 342 miles. The fair and reasonable interstate rate is and has for years been $9.50. A passenger starting from St. Louis may and does, buy his ticket to Kansas City, 275 miles at two cents a mile, or $5.50; he then buys his ticket to Topeka, 67 miles, at three cents a mile or $2.20, making a total from St. Louis to Topeka of $7.50, thus saving to himself and losing to the car-
112 rier the difference between $9.50 and $7.50, or $2.00. This illustrates the situation upon other lines in the state, so that as a matter of fact it is true that in a state located as the state of Missouri is, the lowering of the rate upon the state traffic below that of the interstate necessarily affects, fixes and lowers the interstate rate in the manner herein stated. The same thing is true of the fright traffic (though not in this respect in as pointed a degree), because the same practice can, is and will be adopted as to freight.

Wherefore, complainant prays, as heretofore prayed, and asks that the defendants be required to also answer this amendment, but an answer under oath is waived, and in addition to the relief heretofore asked, complainant asks that Herbert S. Hadley, Attorney General of the State of Missouri, be temporarily and permanently enjoined from prosecuting the said suit in the state court which he has instituted against the complainant.

And your orator will ever pray, etc.

S. W. MOORE,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

STATE OF MISSOURI,
County of Jackson, ss:

I, J. A. Edson upon oath say that I am President of complainant in the above entitled cause, and as such am familiar with the traffic questions of said company, and all the matters and things mentioned in said amendment which I have read; I know the contents thereof and the same are true of my own knowledge, except as to those stated upon information and belief, and as to those matters, I believe them to be true.

J. A. EDSON.

Subscribed and sworn to before me this 6th day of July, 1907.
My commission expires October 10, 1908.
[SEAL.] CLARENCE R. HALL,
Notary Public.

113 Afterwards, towit, on the 16th day of July, 1907, Acknowledgments of service of subpœna were filed.
Said acknowledgments are in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

D. J. DEAN.
W. D. CORBIN.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

HERBERT S. HADLEY,
Attorney General, Solicitors for Railroad Commissioners, Including H. R. Oglesby, Herbert S. Hadley, Attorney General, and Abernathy Furniture Co., The Kember Grain Co., and Geo. W. Witter.

114 Afterwards, to-wit, on the 31st day of July, 1907, the acknowledgment of service of subpœna by Joseph M. Patterson, et al., was filed. Said acknowledgment of service is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Acknowledgment of Service of Subpœna.

Service of the subpœna issued herein upon June 25, 1907, is acknowledged with the same force and effect and no more than if served by the proper officer.

CHARLES W. GERMAN,
County Counselor, Solicitor for Joseph M. Patterson, Charles E. Moss, and George Dodd, County Judges of Jackson Co., Mo., and Arthur C. Warner, County Treasurer of Jackson Co., Mo.

115 Afterwards, to-wit, on the 2nd day of August, A. D. 1907, the joint and several demurrer of John A. Knott, et al., was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Demurrers of the Above Named Defendants, John A. Knott, Frank Wightman, and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Amended and Supplemental Bill of Complaint, as Amended.

First. These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and form as the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer show:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for, from or against these defendants, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

116 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. These defendants further demur to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. These defendants further demur to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. These defendants further demur to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause
117 of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complain-t to the relief prayed for, or to any relief whatsoever.

Fifth. These defendants further demur to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City, Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. These defendants further demur to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in
118 said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they

constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State courts.

Seventh. These defendants further demur to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

119 Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically mentioned, or any of them, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

120 Afterwards, to-wit, on the 2nd day of August, A. D. 1907, the demurrer of Herbert S. Hadley, Attorney General was filed.

Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Demurrers of the Above Named Defendant, Herbert S. Hadley, Attorney General, to the Amended and Supplemental Bill of Complaint as Amended.

First. This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint as amended to be true in manner and for mas the same are therein and thereby set forth and alleged, doth demur thereto and for cause of demurrer showeth:

1. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for, from or against this defendant, or to any relief whatsoever.

2. It appears upon the face of complainant's amended and supplemental bill of complaint as amended that the complainant has an adequate remedy at law.

3. The matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, are not nor are any of them germane to or supplementary of the original bill in this case.

121 4. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

Second. This defendant further demurs to the fifth, sixth, seventh and eighth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the same are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle complainant to the relief prayed for, or to any relief whatsoever.

Third. This defendant further demurs to the ninth and tenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fourth. This defendant further demurs to the eleventh and twelfth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in
122 said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for, or to any relief whatsoever.

Fifth. This defendant further demurs to the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth paragraphs of the complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraphs are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraphs entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraphs do not entitle the complainant to the relief prayed for or to any relief whatever; (*d*) it appears from said paragraphs that the State Circuit Court of Kansas City, Missouri, has jurisdiction of the suit against the complainant pending therein and mentioned in said paragraphs; (*e*) the State of Missouri had a lawful right to institute said suit in said State court, and said State court had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute the suit referred to in said paragraphs against the complainant, in the State Circuit Court at Kansas City,

Missouri, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant is aggrieved by the suit against it in the State Circuit Court mentioned in said paragraphs, it has an adequate remedy by making its defense (if any it have) to the same, in said State court.

Sixth. This defendant further demurs to the twentieth paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in
123 said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatsoever; (*d*) it appears from said paragraph that the Circuit Court of Jackson County, Missouri, and the Circuit Court at St. Louis, Missouri, have jurisdiction, respectively, of the suits against the complainant and other railway companies mentioned in said paragraph; (*e*) the State of Missouri had a lawful right to institute the suits mentioned in said paragraph, and said State courts had a lawful right to entertain jurisdiction of the same; (*f*) the said Attorney General had a lawful right and the authority to institute in said State Circuit Courts the suits against the complainant and the other railway companies mentioned in said twentieth paragraph, and he has the lawful right and authority to proceed with and prosecute the same to a conclusion; (*g*) if the complainant or any of said other railway companies are aggrieved by the suits in said State Circuit Courts mentioned in said twentieth paragraph, they have an adequate remedy by making their defense (if any they have) to the same, in said State court.

Seventh. This defendant further demurs to the twenty-first paragraph of complainant's amended and supplemental bill of complaint, as amended, because (*a*) the matters and things set forth in said paragraph are not germane to or supplementary of the original bill herein; (*b*) if the matters and things set forth in said paragraph entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill; (*c*) the matters and things set forth in said paragraph do not entitle the complainant to the relief prayed for or to any relief whatever.

Wherefore, and for divers other good causes of demurrer
124 appearing in complainant's amended and supplemental bill of complaint, as amended, and in the paragraphs thereof specifically mentioned in the foregoing demurrers, numbered second, third, fourth, fifth, sixth and seventh, respectively, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said amended and supplemental bill of complaint as amended, or to the said paragraphs hereinbefore specifically men-

tioned, or any of them, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendant.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrers are, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

125 Afterwards, to-wit, on the 2nd day of August, 1907, the joint and several demurrer of J. M. Patterson, et al. was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Joseph M. Patterson, Charles E. Moss, and George Dodd, Judges of the County Court of Jackson County, Missouri, and Arthur C. Warner, Treasurer of said County, Four of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the

amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

126 Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

127 Afterwards, to-wit, on the 2 day of August, 1907, the joint and several demurrer of D. J. Dean, et al., was filed. Said demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of D. J. Dean and W. D. Corbin, Two of the Defendants Herein, to Complainant's Original Bill of Complaint, its Amended and Supplemental Bill, and the Amendment to said Bill of Complaint.

These defendants, by protestation, not confessing all or any of the matters and things in complainant's original bill of complaint, its

amended and supplemental bill, and the amendment to said bill of complaint to be true in such manner and form as the same are therein set forth and alleged, demur thereto, and for cause of demurrer show that the said complainant has not in and by said original bill of complaint, its amended and supplemental bill, and the amendment to said bill of complaint, made or stated any such cause as doth or ought to entitle it to the relief thereby sought and prayed for from or against these defendants or either of them.

128 Wherefore, and for divers other good causes of demurrer appearing in said original bill of complaint, the said amended and supplemental bill, and the said amendment to the bill of complaint, these defendants respectively demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to the said original bill of complaint, the said amended and supplemental bill, and the amendment to the bill of complaint, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

129 Afterwards, to-wit, on the 2nd day of August, 1907, the Demurrer of Abernathy Furniture Company, Kemper Grain Company and George W. Witter, was filed. Said Demurrer is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint and Several Demurrer of Abernathy Furniture Company, Kemper Grain Company, and George W. Witter, Three of the Defendants Herein, to Complainant's Amended and Supplemental Bill of Complaint, as Amended.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the complainant's amended and supplemental bill of complaint, as amended, to be true in manner and form as the same are therein and thereby set forth and alleged, do demur thereto and for cause of demurrer show:

First. That the said complainant has not, in and by said amended and supplemental bill of complaint, as amended, made or stated any such cause as ought to entitle it to the relief thereby sought and prayed for from or against these defendants, or to any relief whatsoever.

Second. If the matters and things set forth in complainant's amended and supplemental bill of complaint, as amended, entitle the complainant to any relief whatsoever, they constitute a new, original and independent cause of action, not connected with or dependent upon the cause of action set forth in the original bill.

130–132

Wherefore, and for divers other good causes of demurrer appearing in complainant's amended and supplemental bill of complaint, as amended, these defendants demur thereto and humbly demand the judgment of this court whether they shall be compelled to make any further or other answer to said amended and supplemental bill of complaint, as amended, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
FREDERICK W. LEHMANN,
SANFORD B. LADD,
Solicitors for Defendants.

FREDERICK W. LEHMANN,
SANFORD B. LADD,
Of Counsel.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

SANFORD B. LADD,
Of Counsel for Defendants.

The affidavit required by Equity Rule 31 is hereby expressly waived.

FRANK HAGERMAN,
Counsel for Complainant.

133 Afterwards, to-wit, on the 24th day of September, 1907, an Interlocutory Report of Special Master was filed.

And afterwards, to-wit, on the 7th day of October, 1907, the said Interlocutory Report of said Special Master with the order thereon was refiled.

Said Interlocutory Report and the Order thereon is in words and figures as follows:

Circuit Court of the United States, Western Division of the Western District of Missouri.

MISSOURI PACIFIC RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

CHICAGO, BURLINGTON & QUINCY RAILWAY CO.
vs.
HERBERT S. HADLEY, Attorney General, et al.

WABASH RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Interlocutory Report of Special Master.

To the Honorable the Judges of said Court:

By reason of the premises hereinafter recited the undersigned Special Master to whom the above entitled and fifteen other like causes were referred by order of this Court bearing date March 5th, 1906, begs leave to present this special interlocutory report.

Having completed the taking of the evidence offered by the respective parties complainants and defendants in the three cases above named, these having been duly selected out of the eighteen
134 for hearing in the first instance in pursuance of the order of reference, the same were set down for argument before the Master on June 18th, 1907. On said date, however, the complainants in all the cases, having immediately prior thereto filed their amended and supplemental bills in this Court, further proceedings before the Master were, by consent of all parties suspended subject to be resumed on due notice.

As appears in said amended and supplemental bills and the several amendments thereof since filed, copies of all whereof have been duly received by the Master, there have been brought into these cases various new and additional matters not embraced in the issues so referred.

And being in doubt as to whether the filing of such amended and supplemental bills do of necessity or should, pending proceedings in Court thereon, operate as a stay of further proceedings before him and of his report upon the matters and issues so referred, the Special Master therefore submits this Interlocutory Report and respectfully prays for such further orders and directions in the premises as to the Court may seem meet.

F. L. SCHOFIELD,
Special Master.

The amendments pending the hearing of the original bills of complaint had the effect, in law, of uniting the matters complained of in one bill. They, therefore, constitute but one bill of complaint and all matters involved should be fully heard and the Master's findings should be embraced in a single report.

(Signed) JNO. F. PHILIPS, *Judge.*

October 7th, 1907.

135 Afterwards, to-wit, on the 13th day of November, 1907, the following order was filed and entered of record, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO., Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2998, 2999, 3000, 3001, 3002, 3003, 3004 and 3006.

Order.

This cause coming on for hearing this November 13, 1907, it is by consent of parties ordered that leave of court be and is hereby granted to amend complainant's "Amendment to complain-t's bill

of complaint," by erasing and striking out of paragraph 15 thereof the words "between 12 and 1 o'clock A. M." in lines 27 and 28 on page 2, and the words "at the said hours of" in lines 1 and 2 on page 3, and complainant's counsel are directed to forthwith make such erasure.

(Signed) SMITH McPHERSON, *Judge.*

136 Afterwards, towit, on the 10th day of April, 1908, the following Order was filed and entered of record:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Order.

This cause came on for hearing this 10th day of April, 1908, upon the demurrers herein filed. The parties appeared by their respective counsel, and the court, after argument, being fully advised in the premises, overrules said demurrers.

(Signed) SMITH McPHERSON, *Judge.*

137 Afterwards, to-wit, on the 12th day of May, A. D. 1908, the joint answer of John A. Knott, et al., was filed. Said answer is in words and figures as follows.

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

The Joint Answer of the Defendants John A. Knott, Frank Wightman and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendments Thereto.

These defendants now, and at all times hereafter, saving to themselves all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of Complaint, as amended, for answer thereto, or to so much thereof as they are advised is material or necessary to make answer to, answering say:

That they do hereby adopt as their Answer herein the answer of Herbert S. Hadley, Attorney-General of the State of Missouri, and all and singular the statements and averments thereof as fully as if the same were repeated herein, and they ask that the said Answer be taken in all respects as the Answer of them and of each of them.

These defendants deny that the complainant is entitled to any relief whatever against these defendants, without this, that
138 any other matter, cause or thing in the complainant's amended and supplemental bill and the amendments thereto, contained, material or necessary for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants, or any of them; to each of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Ass't Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.
S. W. MOORE,
FRANK HAGERMAN,
Solicitors for Complainant.

Afterwards, to-wit, on the 12th day of May, A. D. 1908, the answer of Herbert S. Hadley, Attorney General, was filed.

Said answer is in words and figures as follows:

139 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Answer of Herbert S. Hadley, Attorney General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This defendant now, and at all times hereafter, saving to himself all and all manner of benefit, or advantage of exception, or other-

wise, that can or may be had or taken to the many errors and imperfections in said Amended and Supplemental Bill of complaint, as amended, for answer thereto, or to so much thereof as he is advised is material or necessary to make answer to, answering says:

This defendant admits Paragraphs 1, 2, 3 and 4 of the Amended and Supplemental Bill.

This defendant denies that the Governor of the State, in giving his written reason for approving the Act of 1905, referred to or indicated that it was with some reluctance that he signed the same.

And this defendant denies that any acknowledgment was made of the invalidity of the Act of 1905, referred to in Paragraphs 5 and 6 of the Amended and Supplemental Bill; but he admits that the Legislature of the State of Missouri did pass an act, effective June 14, 1907, in words and figures as set forth in Paragraph 6 of said Amended and Supplemental Bill.

But this defendant denies that it was the purpose or the intention of the defendant herein to attempt to enforce all penalties which may accrue if the said acts are held to be illegal.

This defendant admits that the Legislature of Missouri in 1907 passed the two acts set forth in Paragraph 7 of said Amended and Supplemental Bill.

And this defendant denies that if the complainant should charge the maximum rates prescribed by the acts of the General Assembly of the State of Missouri enacted at its session in 1907, the total gross receipts of the complainant from State traffic would be reduced in a very large sum, and denies that the said freight acts or any of them, are violative of the provisions of the Constitution to the same extent as complainant has alleged with respect to the Act of 1905, or to any extent whatever.

And this defendant denies that the rates fixed by the Acts of 1907 are unreasonable and confiscatory, and less than the cost of the service.

And this defendant denies that the Governor of the State of Missouri in calling for the passage of said Act of 1907, and the Legislature in passing the same, did so for the avowed purpose of increasing certain of the maximum rates of the Act of 1905, which they conceived had in this litigation been proved to be unreasonable and confiscatory, and could not be enforced.

And this defendant denies that the rates as finally fixed by the Acts of 1907 were not on such a basis as would return a reasonable and fair compensation to the complainant upon the value of that portion of its property devoted to such use.

And this defendant denies that if the laws in existence in 1905, relative to passenger fares, had remained in force, the freight rates, as fixed by said Acts of 1907, would be unreasonable or confiscatory, or that they would not give a just return upon the value of that portion of complainant's property devoted to said traffic.

This defendant denies that the Legislature of the State acted without any fixed or definite knowledge upon the subject of rates, or that they erroneously conceived that if the increase in freight rates were necessary and were made, there could be a general equalization

of rates by decrease in the passenger rates, and that thereby, in substance, they could legally overcome and offset any advantage from an increase in freight rates by decreasing the maximum rates to be charged for said passenger traffic about 33 1/3 per cent, and thus while defeating pending litigation, the public, as a whole, would not be the loser.

This defendant denies that the result was that as part and parcel of one transaction and substantially as one law, and to accomplish the purposes alleged in the Amended and Supplemental Bill, there was passed, and the Governor approved, an act called the "Passenger Act," taking effect on June 14, 1907; but this defendant admits that the act relative to passenger rates, in words and figures as set forth in said Paragraph 9 of the Amended and Supplemental Bill, was enacted by the Legislature of the State of Missouri.

And this defendant denies that the said act regulating passenger rates is violative of any provision of the Constitution of the State of Missouri, or of the United States, and denies that it is subject to any of the objections made in the original bill to the Act of 1905, and denies that any of the facts alleged in the original bill as to why the Act of 1905 should be held to be void and action thereunder restrained, are true as to the Acts of 1907, or of the said Passenger Act.

This defendant denies that the said Passenger Act will reduce the earnings of the complainant from its passenger business in the practical and ordinary operation of the road, or otherwise, substantially one-third, or in any amount whatsoever.

The defendant has no knowledge or information or belief as to the aggregate amount of the State passenger earnings for the year 1906, and he denies that if the Passenger Act aforesaid had been applied thereto, State earnings would have been reduced in any sum whatever.

141 And this defendant denies that the value of that portion of complainant's property devoted to the carriage of State business, considered as a whole, or separately, as to the passenger business only, is such in any case that the reduction in rates by said Passenger Act would fail to make a reasonable return on such valuation, and denies that it would cause such business to be done at an actual loss.

This defendant denies that the said Passenger Act was passed for the avowed purpose of reducing the State passenger rates of complainant so as to off-set and overcome the supposed increase of freight rates made under the Act of 1907, and denies that the attempt was made to frame each act so as to avoid the injunctive relief in this or in each action heretofore instituted by railroad companies operating lines in Missouri.

And this defendant denies that if the injunction be not granted herein, the complainant is without means of adequate and proper relief, or would be denied due process of law. And this defendant alleges the fact to be that in the suit instituted by the State of Missouri to require by mandamus or mandatory injunction the observance of the laws of the said State, every defense, which the complainant herein and defendant in said suit may have, could be pre-

sented and considered, and the State of Missouri is contemplating no suit of any kind which would in any manner embarrass the complainant in the assertion of any rights which it may have.

This defendant says that it is not true that the special duties devolving upon the members of the Board of Railroad Commissioners and the Attorney-General as stated in the original bill, apply to the Acts of 1907, and the Passenger Act aforesaid.

And this defendant denies that it is necessary or proper that the county judges and county treasurers of the State of Missouri should be made parties to this litigation, or that any private person should be drawn in as defendant thereto.

This defendant denies that the rates fixed by each, or any of the said Acts of 1907, or by said Passenger Act, or that the rates fixed by all of said acts, as a whole, are unreasonable or confiscatory, or that they will force an unreasonable reduction or confiscation of complainant's entire revenue, or of any part thereof, or that the said acts, or any of them, are in violation of the provisions of the Fourteenth Article of Amendment to the Constitution of the United States, or of any other provision of said Constitution.

And this defendant denies that to enforce the rates fixed by any of said acts would necessarily affect the interstate rates upon the same commodities. And this defendant alleges the fact to be that for many years past the complainant has voluntarily carried passengers in the State of Missouri, whose travel was wholly within the State, at the rate of two cents per mile. It has also carried many persons, other than employés of their own or other railroad companies, without exacting any compensation whatsoever, and the great bulk of passenger transportation within the State has been for many years past conducted at approximately two cents per mile, and the charge of three cents exacted by complainant of any person was an unjust, excessive and discriminatory charge upon such persons.

Referring to Subdivision (*b*) of Paragraph 11 of complainant's Amended and Supplemental Bill, this defendant says that the real purpose of the original bill herein was to determine whether
142 that portion of the property of complainant devoted to State freight business, could, if the Act of 1905 were enforced, receive such return upon its value as would be fair, reasonable and not confiscatory, and that upon the trial of the three cases heard by the Special Master such was the theory adopted by both parties, and the proofs were by both of them directed to that end. And this defendant avers that the only legitimate and proper inquiry in this suit is as to the questions of law and fact arising upon the issues made by the original Bill and the Answer thereto, as to the validity of the said Act of 1905, and the results of its operation, and whether the same, if enforced, would be confiscatory and unremunerative to the complainant. Defendant asserts that the purpose of the original Bill ought not to be, and cannot, without disregard of the established rule of procedure of the Court of Chancery, be changed and perverted, to the end that the effect of the freight rate Act, or the passenger rate Act of 1907, shall be considered in this litigation, and that the only question proper to be considered or determined by this court in this action is the consequences to the complainant of the enforcement of the said Act of 1905.

This defendant denies that on the 11th day of June, 1907, the complainant filed herein a written application for leave to file an Amended and Supplemental Bill, and he denies that upon the same day there was served upon the counsel for the defendants in the original Bill herein, and accepted by them, a written notice that a copy of the form of the said Amended and Supplemental Bill, reciting that application to file same and for a temporary injunction would be presented to this Court upon June 14, 1907, at the opening of said court at 10 a. m.

And he denies that two petitions in equity in the name and on behalf of the State of Missouri, referred to in Paragraph 15 of the said Amended and Supplemental Bill, as amended, were filed by him in disregard or in contempt of the jurisdiction of this Court; and he alleges the fact in that regard to be that on the said 14th day of June, A. D. 1907, and between the hours of 8 and 9 in the morning of the said day, he did, in the name and on behalf of the State of Missouri, by virtue of his office and authority as Attorney-General of the said State, file two petitions of the State of Missouri, the same being petition in equity against the complainant herein, as defendant in the said suit, the one asking that the said complainant herein, defendant in the said suit, be required to comply with the maximum freight rates provided by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the other asking that the said complainant herein, defendant in the said suit, be required to comply with the passenger rates fixed by the laws of the State of Missouri, enacted at the legislative session of the year 1907, and the said petitions were filed in the Circuit Court of the State of Missouri in and for Jackson county, at Kansas City, the same being a court of the State of Missouri of competent and general jurisdiction, and the said petitions were filed, and the suits instituted thereby, were pending and summons, according to the laws of the State of Missouri, issued upon the said petitions and served upon the complainant herein, defendant therein, before the hour of 10 o'clock a. m. of said 14th day of June, 1907, and before any Amended or Supplemental Bill, or any amendment to the original Bill herein was filed by the complainant, or before any such amended or Supplemental Bill, or amendment to the original Bill was presented to this Court for consideration.

And this defendant alleges further that the said petition in equity, so as aforesaid filed by him in the Circuit Court of Jackson
143 county, relative to the freight rates, has been dismissed by him, and is no longer pending, but that the said petition in equity, so as aforesaid filed by him in the Circuit Court of Jackson county, at Kansas City, relative to the passenger rates, is still pending and undetermined.

And this defendant admits that the said Circuit Court of Jackson county did on the said 14th day of June, A. D. 1907, issue its restraining order, returnable upon the 24th day of June, 1907, in the said suit in equity relative to the said passenger rates, requiring the complainant herein, and defendant therein, to comply with the law of the State of Missouri in that behalf.

This defendant admits that upon the 14th day of June, 1907, at 10 a. m., there were presented to this Court the application of complainant for leave to file its amended and Supplemental Bill, and for a temporary injunction, and that a continuance of the hearing of said application for one day was granted by the said court, and that this Court, upon its own motion, made the orders stated and referred to in Paragraph 16 of the said Amended and Supplemental Bill, as amended.

This defendant admits that upon June 17, 1907, this Court made and entered the order set forth in Paragraph 17 of the said Amended and Supplemental Bill, as amended.

And this defendant further admits that subpœnas have been issued as by the said order provided, and served upon this defendant.

This defendant admits that upon June 24, 1907, the said Circuit Court of Jackson county, upon the application of this defendant, entered an order dismissing the petition in equity of the State of Missouri, theretofore filed by him, relative to the freight rates prescribed by the laws of the State of Missouri, and that upon the same day, upon his application, the said court entered an order setting aside the restraining order previously issued by it in the suit in equity of the State of Missouri against this complainant, as defendant therein, relative to the passenger rates prescribed by the laws of the State of Missouri.

And this defendant avers that he made his application to set aside the said restraining order because this complainant had put into effect the passenger rates prescribed by the laws of the State of Missouri and was fully observing the same, and has continued so to do to the present time.

This defendant admits that he did not dismiss the said suit in equity, relative to the passenger rates, and has insisted that it should remain pending, and that it is his purpose to proceed therewith, if the complainant herein, defendant in the said suit, shall, at any time hereafter, cease to comply with the laws of the State of Missouri relative to passenger rates in said State.

And this defendant denies that the said State court has no jurisdiction in the premises, or that it has no right or power to compel complainant herein and defendant in the said suit, to put in force the passenger rates referred to, and he denies that any action by the said court would deny to complainant the protection accorded to it by the Fourteenth Amendment to the Constitution of the United States, and he alleges the fact in that regard to be that the said Circuit Court of Jackson county is a court of competent and general jurisdiction, having jurisdiction alike of the person of the complainant herein, defendant in the suit pending in the said Circuit Court of Jackson county, and that due process of law can and will be had by the complainant herein, defendant in the said suit, in the said
144 suit, and any defense that it may have to the said suit in equity, so as aforesaid brought by the State of Missouri in said Circuit Court of Jackson county, can and will be fully and fairly heard by said Circuit Court of Jackson county, and any

rights which the complainant herein, defendant in the said suit, in said State court may have, will be fully conserved and protected.

This defendant denies that the facts alleged in Paragraphs 13 to 18, inclusive, of the Amended and Supplemental Bill, as amended, are true as to each or any of the several railroad companies named in Paragraph 20 of the said Amended and Supplemental Bill, as amended, except as they correspond with the admissions and averments hereinbefore set forth in this Answer.

This defendant admits that each of said companies had filed original bills in this Court similar to the original bill filed by the complainant herein.

This defendant also admits that the suits in equity brought by the State of Missouri were brought against the several railroad companies named in said Paragraph 20 either in the Circuit Court of Jackson county, or in the Circuit Court of the City of St. Louis, as in said paragraph stated.

And this defendant admits that it is his purpose to prosecute the said suits in equity, so brought by the State of Missouri in said courts, in relation to the passenger rates, in the event that the said companies, defendants in said suits, shall fail to continue in observance of the passenger rates prescribed by the laws of the State of Missouri.

And this defendant denies that as to any of the complainants in the suits pending in the Circuit Court of the United States, defendants to the suits brought by the State of Missouri, restraining orders from the said State courts were served in the court room of this Court while the said parties, or any of them, were presenting applications to this Court upon June 14, 1907, but, on the contrary, this defendant alleges the fact to be in that regard that the said restraining orders were all served upon the proper officers of the said companies at their respective offices.

And this defendant denies that the said Passenger Act of 1907, and that each or any of the freight acts of the State of Missouri of 1907, is void and of no effect, for the reason that it is an attempt to deprive complainant of its property without due process of law, or denies the complainant the equal protection of the law, and he alleges the fact in that regard to be that the said Passenger Act of 1907 is a reasonable and proper regulation of passenger rates in the State of Missouri, and that each of said freight acts of 1907 is a reasonable and proper regulation of rates for the transportation of freight; and that the said rates so prescribed by the said several acts of the General Assembly of the State of Missouri, and each of them, prescribe fair, proper and remunerative rates for the service to which the said acts severally relate.

And this defendant denies that the penalties provided by the said acts for a violation of them are harsh and unreasonable, or that they could in anywise be made burdensome, except through a persistent and continued disregard of the law by the said complainant.

This defendant denies that the said acts, or any of them, influence, affect or bear upon interstate freight and passenger traffic, or that they, or any of them, fix and regulate interstate freight and passenger traffic.

As to whether the Kansas City, Clinton & Springfield Railway Company, and the St. Louis & San Francisco Railroad Company, between Kansas City and Springfield, are of substantially the
145 same length, or as to whether the line of the former between those points extending into and out of Kansas, or whether all its carriage between said points is interstate, or whether the other company has one line which in its course runs into and out of a portion of Kansas, and another separate line between said points which extends wholly through Missouri, or whether the carriage between said points upon one line is interstate and upon the other state; or whether between Joplin and Kansas City there are three trunk lines substantially the same length, some of which are within the State, and some of which are without the State, or whether all of the traffic on some of said lines between Joplin and Kansas City is State, and on other of said lines, between said points, is interstate; or whether between St. Louis and St. Joseph, Missouri, the line of the Chicago, Burlington & Quincy Railroad Company does not pass out of the State, or whether the traffic on said road between said points on said line is wholly State; or whether the line of the Missouri Pacific Railway Company between said St. Louis and St. Joseph in its course passes into and out of the state of Kansas, or whether the entire traffic upon said railway between said points is interstate; or whether between Kansas City and St. Joseph, Missouri, there are four trunk lines of substantially equal length, some of which are wholly within Missouri, and upon some of which all their traffic between said points is State, or whether the lines of some of them pass into and out of Kansas, or the entire traffic upon them, between said points, is wholly interstate, this defendant has no knowledge, information or belief.

This defendant admits that some of the large and populous communities of the State are upon its eastern and western borders. He admits that the main course of part of the traffic through the State is east and west. He has no knowledge, information or belief as to whether all of the railroads in the State either operate lines extending into other states, or into the state of Kansas or Illinois, or whether any of them have joint freight and passenger traffic arrangements with lines running into those states, or interstate carriage for freight and passengers.

As to whether the interstate passenger rates are higher than those fixed by the Passenger Act of 1907, or whether passengers starting from points in Missouri to go to other states buy tickets at two cents a mile to the last station in Missouri upon its border, and then buy tickets or pay fare from thence to their interstate destination, and vice versa, this defendant has no knowledge, information or belief.

As to what the interstate rate from St. Louis to Topeka, Kansas, is, or has been, this defendant has no knowledge, information or belief; or as to whether a passenger starting from St. Louis to Topeka buys his tickets in the manner stated in the Amended and Supplemental Bill, as amended.

He denies that the lowering of the State rate for the transportation

of passengers necessarily affects, fixes or lowers the interstate passenger rate, and he denies that the same is true of the freight traffic.

This defendant denies that the complainant is entitled to any relief whatever against this defendant, without this, that any other matter, cause or thing in the complainant's Amended and Supplemental Bill and the amendments thereto, contained, material or necessary for this defendant to make answer unto, and not herein or hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and
146 willing to aver, maintain and prove, as this Honorable Court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
Assistant Attorney General,
Solicitors for Defendants.

SANFORD B. LADD,
F. W. LEHMANN,
Of Counsel.

Received copy of the above and foregoing Answer May 4, 1908.
S. W. MOORE,
FRANK HAGERMAN,
Solicitor- for Complainant.

147 Afterwards, to-wit, on the 1st day of June, A. D. 1908, the replication of complainant to the answer of John A. Knott, et al., was filed. Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. —.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Joint Answer of John A. Knott, Frank Wightman, and H. R. Oglesby, Railroad Commissioners of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants for replication thereunto, saith: That it does and will

aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

S. W. MOORE,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

148 Afterwards, to-wit, on the 1st day of June, A. D. 1908, the replication of complainant to the answer of Herbert S. Hadley, Attorney General, was filed.

Said replication is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

Replication of Complainant to the Answer of Herbert S. Hadley, Attorney General of the State of Missouri, to the Complainant's Amended and Supplemental Bill and the Amendment Thereto.

This replicant saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendant for replication thereunto, saith: That it does and will aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant, is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

S. W. MOORE,
Solicitors for Complainant.

FRANK HAGERMAN,
Of Counsel.

149 Afterwards, to-wit, on the 13th day of June, 1908, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And Also

In Equity.

RAILROAD COMPANIES
v.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3001, 3002, 3003, 3004, and 3006.

Order.

Causes numbered 2988, 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003 and 3006 came on for hearing this June 13, 1908, upon the application of complaints to at once set down for hearing their applications for temporary injunctions. The parties appeared by counsel, the defendants insisting that such hearing be postponed for a period of ninety days, and the court being fully advised in the premises Orders

1. The Special Master shall file herein so much of the testimony as has been taken in any of the 18 cases.

2. Orders on the applications to set down for hearing at once the motions for temporary injunctions are deferred for the present, and in lieu thereof by consent of counsel all of the 18 cases are set for final hearing the 5th day of October, 1908, or as soon thereafter as the court can hear the same upon such evidence as has been heretofore taken, and such further oral and documentary evidence as then may be offered under the 67th rule in equity as amended.

(Signed) SMITH McPHERSON, *Judge.*

150 Afterwards, to-wit, on the 13th day of June, 1908, an affidavit was filed. Said affidavit is in words and figures as follows, to-wit:

STATE OF MISSOURI,
City of St. Louis, ss:

T. F. Wharton, being first duly sworn, says that he is Manager of the Saint Louis Office of Haskins & Sells, Certified Public Accountants, and has been for the past three years; that the firm of

Haskins & Sells has been employed by the State of Missouri for the past two years as expert accountant in connection with the Maximum Freight Rate Litigation and the Passenger Rate Litigation; and that as Manager of the Saint Louis Office, this affiant has been connected with all of said work and is familiar therewith and with the length of time required for such work; that he was asked by the Attorney General on the 9th day of June, 1908, to come to Jefferson City for the purpose of making an examination of statements filed on that date by the following named railroads:

Missouri Pacific Railway Company,
Missouri, Kansas & Texas Railway System,
Chicago Great Western Railway Company,
Chicago, Rock Island & Pacific Railway Company,
St. Louis & San Francisco Railroad Company,
St. Louis Southwestern Railway Company,
Chicago & Alton Railroad Company,
St. Joseph & Grand Island Railway Company,
Kansas City, Clinton & Springfield Railway Company,
Atchison, Topeka & Santa Fe Railway Company,

such examination to be made in order to determine the length of time necessary for the verification of the reports submitted by the aforesaid railroad companies and for the preparation of reports in relation thereto; that on the 10th day of June, 1908, this affiant went to Jefferson City for the purpose indicated; that he then received from Attorney General Hadley the statements referred to, and more particularly described in Exhibits "A" to "J" hereto attached and made a part of this affidavit; Further, that in
151 order to properly pass upon the reports referred to, it will be necessary, First, to verify the clerical accuracy of the figures themselves; Second, to verify the correctness of the comparisons made where there have been such comparisons; and where no comparisons have been made, it will be necessary to prepare, or have prepared, proper comparative statements; Third, to verify the correctness of the division of expenses between freight and passenger business and between State and Inter-State business; and Fourth, it will be necessary to compare the method used in dividing expenses with the method by which such expenses were divided by the Missouri Pacific, Burlington and Wabash Railroads, in the testimony already heard in the Maximum Freight Rate cases. In addition to this, it will be necessary to secure information in other states, where there has been no change in Passenger Rates during the past two years, as to the effect on Passenger earnings of the business depression, which began about the middle of October, 1907. It will also be necessary to secure from other states where the two cent passenger law has been in effect for some time, information showing the effect of the operation of the law on the earnings of the railroad companies.

In view of the amount of work above outlined that it will be necessary to do in connection with the statements hereinbefore referred to, this affiant believes that it will require the services of four or five experienced accountants for about three months to make the

necessary verifications, prepare the necessary statistics, and place in proper form all such matter for the information of the Court.

T. F. WHARTON.

Subscribed and Sworn to Before me this 11th day of June, 1908. Commission expires Jany. 14, 1911.

[SEAL.] FRANK WELLER,
Notary Public,
City of St. Louis, Mo.

NOTE.—In the attached exhibits, the word "State" is used to indicate "Intra-State" business.

152 EXHIBIT "A."

Missouri Pacific Railway Company.

Statements Showing Passenger Earnings by Months for the Six Months Ended December 31, 1907 *and* 1906, *Divided Between State and Interstate, with Expenses for the Periods Named; Also Reports Showing Freight Earnings and Expenses for the Same Periods.*

Method of dividing expenses and charges between freight and passenger, and State and Inter-State business is not shown.

Summary of Intrastate Passenger Business Only as Shown by Statements for the Six Months Ended December 31.

	1907.	1906.	Increase.
July to October.....	$580,056.65	$564,593.97	$15,462.68
November and December	218,420.34	245,212.35	26,792.01*†
Total.....	$798,476.99	$809,806.32	$11,329.33*†
Operating Expenses....	728,676.35	664,730.09	63,946.26
Net Earnings.....	$69,800.64	$145,076.23	$75,275.59*†
Charges, not Including Interest	23,870.87	8,582.45*	32,453.32
Available for Interest and Dividends.....	$45,929.77	$153,658.68	$107,728.91*†

[*In red ink in copy.]
† Decrease.

153

EXHIBIT "B."

Missouri, Kansas & Texas Railway System.

Various Monthly Statements of Passenger and Freight Earnings and Expenses for the Period from June 19 to December 31, 1907, with Statements by Months for the Period from June 19 to September 18, 1907 and 1906.

State and Inter-state business is not separated in reports.

Method of dividing expenses between freight and passenger business is now shown.

Summary of Passenger Earnings, Expenses and Charges, as Shown by Statements, for the Periods from June 19 to September 18.

	1907.	1906.	Increase.
Revenue	$365,573.83	$318,861.06	$46,712.77
Operating Expenses ...	235,619.96	225,148.53	10,471.43
Net Earnings.....	$129,953.87	$93,712.53	$36,241.34
Taxes and Rentals.....	25,381.17	27,261.31	1,880.14*†
Available for Interest and Dividends.....	$104,572.70	$66,451.22	$38,121.48

[*In red ink in copy.]

† Decrease.

154

EXHIBIT "C."

Chicago Great Western Railway Company.

Statements (Supposed to be Filed by this Company) Showing Passenger Earnings Only by Months for the Periods from June 19 to September 18, 1907 and 1906, and Also for the Three Months Ended September 30, 1907 and 1906, Divided Between State and Inter-State.

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements for the Periods from June 19 to September 18.

	1907.	1906.	Decrease
Intra-State	$12,568.23	$14,604.75	$2,036.52
Missouri to Other States.	19,423.07	21,753.31	2,330.24
Other States to Missouri.	20,297.69	18,783.71	1,513.98*†
Other States through Missouri.....	1,225.86	1,047.64	178.22*†
Between Points in Missouri Through Kansas.	4,181.53	4,292.36	110.83
Total.....	$57,696.38	$60,481.77	$2,785.39

[*In red ink in copy.]

† Increase.

155 EXHIBIT "D."

Chicago, Rock Island & Pacific Railway Company.

Statement (Tentative Figures Only) for Period from June 19 (6 A. M.) to and Including September 18, 1907 and 1906, of Passenger and Freight Earnings, Expenses and Taxes.

Business is not divided between State and Inter-state.
Method of dividing expenses is not given.

Summary of Passenger Earnings, Expenses and Taxes, as Shown by Statement, for the Period Mentioned Above.

	1907.	1906.	Increase.
Revenue	$271,240.36	$246,701.04	$24,539.32
Operating Expenses:			
Maintenance of Way and Structures	$113,162.23	$85,857.89	$27,304.34
Maintenance of Equipment	48,251.58	37,947.48	10,304.10
Other Expenses	162,531.00	163,760.05	1,229.05*†
Total	$323,944.81	$287,565.42	$36,379.39
Deficit from Operations	$52,704.45	$40,864.38	$11,840.07
Taxes	5,411.14	3,946.88	1,464.26
Deficit before deducting Interest, etc	$58,115.59	$44,811.26	$13,304.33

[*In red ink in copy.]
† Decrease.

156 EXHIBIT "E."

St. Louis & San Francisco Railroad Company.

Statements by Months and in Total for the Three Months Ended September 30, 1907, of State and Inter-State Passenger and Freight Earnings, Expenses and Charges.

Method of dividing expenses and charges between Freight and Passenger business is not shown: Expenses and Charges, and Miscellaneous earnings are divided between State and Inter-State business on the basis of the actual earnings of each class of business.

No comparisons are made with the same periods of the previous year, under three-cent law.

Summary of Intra-State Passenger Business, as Shown by Statements, for the Three Months Ended September 30, 1907.

Revenue	$718,992.65
Operating Expenses	599,298.01
Net Earnings	$119,694.64
Taxes and Rentals	24,104.07
Available for Interest and Dividends	$95,590.57

157

EXHIBIT "F."

St. Louis Southwestern Railway Company.

Statement for Six Months Ended December 31, 1907, of State and Inter-State Passenger and Freight Earnings, Expenses and Charges, with Memorandum of Bases Used in Dividing Revenues, Expenses and Charges between Freight and Passenger and State and Inter-State Business.

Expenses are divided between Freight and Passenger business generally on basis of revenue train-miles. Expenses are divided between State and Inter-State business on basis of number of passengers one mile. Taxes are divided on basis of freight and passenger revenue of each class.

No comparisons are made with same period of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statement, for the Six Months Ended December 31, 1907.

Revenue	$29,625.21
Operating Expenses	31,407.27
Loss from Operation	$1,782.06
Taxes and Sundry Charges (Less Other Income)	1,224.67
Total Loss, before deducting Interest	$3,006.73

NOTE.—During the same period, the Inter-State business shows a profit, before deducting interest of $12,589.49.

158

EXHIBIT "G."

Chicago & Alton Railroad Company.

Statements for the Month of September, 1907, and the Three Months Ended September 30, 1907, and for the Month of October, 1907, and the Four Months Ended October 31, 1907, of Passenger Earnings, Expenses and Fixed Charges, Divided between State and Inter-State Business.

Method of apportioning expenses and charges to Passenger business are not shown. The method of dividing expenses between

State and Inter-State business is not shown; but it is evidently on basis of passenger miles; charge divided between State and Inter-State Passenger business on basis of passenger miles.

No comparions are made with same periods of previous year, under three-cent law.

Summary of Intra-State Passenger Earnings and Expenses, as Shown by Statements, for Four Months Ended October 31, 1907

Revenue	$193,822.87
Operating Expenses	116,267.44
Available for Interest and Charges	$77,555.43
Amount of Interest and Charges	62,283.85*
Surplus for the period	$15,271.58

*Amount of Interest alone not given.

159 EXHIBIT "H."

St. Joseph & Grand Island Railway Company.

Statement of Passengers Carried and Revenue Received, by Months, for the Six Months Ended December 31, 1907 *and* 1906, *Divided between State and Inter-State.*

No expenses are given.

Summary of Passenger Earnings, as Shown by Statements, for the Six Months Ended December 31.

	1907.	1906.	Decrease.
Intra-State	$20,101.43	$25,115.93	$5,014.50
Inter-State	9,718.42	11,384.51	1,666.09
Total	$29,819.85	$36,500.44	$6,680.59

160 EXHIBIT "I."

Kansas City, Clinton & Springfield Railway Company.

Statements of Passengers Carried and Revenue Received, by Months, with Expenses Charged to Passenger Traffic, for the Period from June 19 *to November* 30, 1907 *and* 1906.

Expenses are not divided between State and Inter-State business. The method of apportioning expenses to Passenger business is not given.

Summary of Passenger Earnings and Expenses, as Shown by Statements, for the Periods Shown Above.

Earnings:	1907.	1906.	Increase.
Intra-State	$24,319.00	$26,159.57	$1,840.57*†
Inter-State	22,171.38	22,043.20	128.18
Total	$46,490.38	$48,202.77	$1,712.39*†
Operating Expenses	92,633.11	92,378.03	255.08
Deficit from Operations	$46,142.73	$44,175.26	$1,967.47

[*In red ink in copy.]
† Decrease.

161 EXHIBIT "J."

Atchison, Topeka & Santa Fe Railway Company.

Statements for the Months of July, August, and September, 1907 and 1906, Showing Passenger and Freight Business, with Expenses of Each, and Statements for the Three Months Ended September 30, 1907, and 1906, Showing Passenger and Freight Earnings, Expenses, and Charges Divided Between State and Interstate Business.

Method of dividing expenses and charges between freight and passenger business is not shown. Expenses are divided between State and Inter-State business on basis of earnings of each class of business.

Summary of Intrastate Passenger Business, as Shown by Statements for the Three Months Ended September 30.

	1907.	1906.	Increase.
Revenue from Passengers.	$56,329.47	$50,959.63	$5,369.84
Excess Baggage, Mail, Express, Etc.	24,531.16	24,162.71	368.45
Total	$80,860.63	$75,122.34	$5,738.29
Operating Expenses:			
Maintenance of Way and Structures	$31,779.37	$28,871.00	$2,908.37
Maintenance of Equipment	9,984.00	7,375.10	2,608.90
Other Expenses	28,706.04	27,955.42	750.62
Total	$70,469.41	$64,201.52	$6,267.89
Net Earnings	$10,391.22	$10,920.82	$529.60*†
Taxes and Rentals	1,647.99	1,624.68	23.31
Available for Interest and Dividends	$8,743.23	$9,296.14	$552.91*†

[*In red ink in copy.]
†Decrease.

162 Afterwards, to-wit, on the 13th day of June, 1908, a Notice was filed. Said notice is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And also

In Equity.

RAILROAD COMPANIES
v.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2995, 2997, 3001, 3002, 3003, and 3006.

Notice.

Complainants in above numbered cases will, upon June 13th, 1908, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, make application to the court to set down for hearing the applications for temporary injunctions therein pending.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice this June 8th, 1908.
HERBERT S. HADLEY,
Attorney General;
JOHN KENNISH,
SANFORD B. LADD,
F. W. LEHMANN,
Solicitors.

163 Afterwards, to-wit, on the 21st day of September, 1908, the Master's Return to Order of June 13, 1908, was filed. Said Master's Return is in words and figures as follows, to-wit:

Circuit Court of the United States, Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, et al.

Also

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Master's Return to Order of June 13, 1908, *With All Testimony Taken.*

To the Honorable the Judges of said Court:

In obedience to the order entered in the abovementioned cases, bearing date of June 13, 1908, the undersigned Special Master herewith returns all the testimony taken before him in the three cases in which testimony was taken, viz. the cases of the Missouri Pacific Railway Company, The Chicago, Burlington & Quincy Railway Company, and the Wabash Railroad Company, together with all the exhibits referred to in said testimony, and being all the testimony taken in any of the said eighteen cases.

Respectfully submitted,

F. L. SCHOFIELD,
Special Master.

Hannibal, Mo., September 18th, 1908.

164 Afterwards, to-wit, on the 5th day of October, 1908, the following order was filed and entered of record:

In the Circuit Court of the United States, Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And Also

RAILROAD COMPANIES
against
HERBERT S. HADLEY, Attorney General, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3001, 3002, 3003, 3004, 3006, All in Equity in Said Court.

Orders.

These cases come on for further hearing this October 5th, 1908, pursuant to the orders in all said cases made June 13th, 1908.

And the Court orders that each all and every of said eighteen (18) cases be and the same are hereby continued until November ninth (9th) A. D. 1908, at ten o'clock A. M., at which time all of said

cases will be called for trial, and the trials will then proceed from day to day until concluded. And said cases will be heard and decrees rendered on the evidence heretofore taken before the Special Master, and on such oral testimony and documentary evidence as may be offered by any of the parties to said cases pursuant to General Equity Rules 67 as amended. The evidence taken in any one of said cases shall be used in each, all and every of the other seventeen (17) cases in so far as the same will be pertinent or germane.

Said cases will be called and heard in the numerical order
165 given said cases by the clerk; that is to say, the case with the lowest numerical number to be first heard, and the next lowest number next heard, and so on until all said cases are heard.

All agreements between any of the parties in any of said cases, whether such agreements are recited in orders of this court or by the Special Master, or whether such agreements are otherwise in writing, or verbally made, are hereby cancelled and will not be regarded by the Court, and future agreements if any will only be considered by the Court when reduced to writing and signed by the parties and filed with the clerk in said case or cases.

However, the orders made in said cases June 13, 1908 and the agreements therein recited are fully ratified and confirmed except only as to change of date for hearing from October 5th, 1908, to November 9th, 1908.

And the applications for temporary injunction are continued until November 9th, 1908, or until such later time as said applications may be presented, and the court may be able to hear the same.

Done in open court this October 5th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

166 In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

MONDAY, *November* 9, *A. D.* 1908.

This day come the parties by their solicitors, the complainant by W. F. Evans, Esq., and Frank Hagerman, Esq., and the defendants by the Honorable Herbert S. Hadley, F. H. Lehmann, Esq., and Sanford B. Ladd, Esq. Thereupon this cause coming on regularly for final hearing, evidence on the part of complainant is begun and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908 the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

TUESDAY, *November* 10, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of ad-
167 journment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

WEDNESDAY, *November* 11, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

168 Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

THURSDAY, *November* 12, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

169 In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

FRIDAY, *November* 13, 1908.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 14th day of December, 1908, the following order was filed and entered of record:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

SATURDAY, *November* 14, 1908.

Now on this day again come the parties by their solicitors.
170 Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until Monday, December 14th.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 15th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Monday, December 14, 1908.

Afterwards, to-wit, on the 16th day of December, 1908, the following order was filed and entered of record:—

171 UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 15, 1908.

Afterwards, to-wit, on the 17th day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al

Also

172 In Equity.

RAILROAD COMPANIES

vs.

HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon, the hearing of evidence on the part of complainant is pro-

ceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 16, 1908.

Afterwards, to-wit, on the 18th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment. further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Thursday, December 17, 1908.

173 Afterwards, to-wit, on the 19th day of December, 1908, the following order was filed and entered of record, to-wit:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of complainant is proceeded with and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Friday, December 18, 1908.

Afterwards, to-wit, on the 21st day of December, 1908, the following order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

174

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon evidence on the part of the complainant, St. Louis & San Francisco Railroad Co., is concluded and further proceedings are postponed until next Tuesday morning at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Saturday, December 19, 1908.

Afterwards, to-wit, on the 22nd day of December, 1908, the following Order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence on the part of defendants is begun and the same not being concluded at the hour of adjournment, further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

Tuesday, December 22, 1908.

175 Afterwards, to-wit, on the 23rd day of December, 1908, the following Order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their attorneys. Thereupon further evidence upon the part of the defendants is heard and the same not being concluded at the hour of adjournment, further proceedings are postponed until Monday, December 28, 1908, at nine o'clock.

(Signed) SMITH McPHERSON, *Judge.*

Wednesday, December 23, 1908.

Afterwards, to-wit, on the 28th day of December, 1908, the following Order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *set:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

176

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence is proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 28, 1908.

Afterwards, to-wit, on the 29th day of December, 1908, the following Order was filed and entered of record, to-wit:—

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD CO.
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Being Cases Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

This day again come the parties by their solicitors. Thereupon the hearing of evidence in proceeded with and further proceedings are postponed until tomorrow morning.

(Signed) SMITH McPHERSON, *Judge.*

December 29, 1908.

177 Afterwards, to-wit, on the 30th day of December, 1908 complainants' request, for findings of fact *was* filed. Said requests are in words and figures as follows, to-wit:

Complainants' Requests for Findings of Fact.

1. The complainants are the eighteen railroad corporations owning and operating lines of railway in Missouri, engaged generally in doing therein with the same property, the entire state and interstate railroad business. With the exception hereinafter stated as to the St. Louis & Hannibal and the Kansas City, Clinton & Springfield, they constitute great trunk lines of railroads, carrying in and through Missouri the commerce of the country, state and interstate, reaching and connecting various commercial centers like Chicago, St. Louis, Kansas City, Omaha, Denver, St. Paul, Memphis, New Orleans and Galveston. Some of them, like the Atchison, Topeka & Santa Fe and the Chicago, Rock Island & Pacific, operate through trans-state trains, running from Chicago to the Pacific Ocean. All operate in connection with other roads at connecting points and large centers so as to carry all the traffic of the state,

freight and passenger, not only that which is state but also that which is interstate, and that which is destined to and from other roads and other states. The interstate business may originate or terminate in the state, or in some instances both there originate and terminate, or it may pass through the state with origin and destination both outside thereof. The St. Louis & Hannibal Railway is located wholly within the state, extending from Hannibal, Missouri, through a valuable and populous part of the state, to a point upon the Wabash Railway, and is the only one of the complainants, the line of which does not cross the state line. The Kansas City, Clinton & Springfield Railway extends from Olathe, Kansas, (a small town about 20 miles from Kansas City, Missouri,) for a distance of about eleven miles to the state line from whence it runs through the southwestern part of the state, but not as in the case with the other
178 railways reaching with its own trains any of the basing points or great commercial or market centers of the state.

2. The same properties, trains and facilities are necessarily used by each company in conducting both the state and interstate business. It would not be practicable to operate in any other way. If separate cars or trains were required to be operated for the state and interstate business or separate facilities used for each, no one of the complainants could for the business of any or all classes in this state pay operating expenses, the public would be greatly inconvenienced, and enormous investments would be required in order to meet changed conditions. It is absolutely essential to the safety, convenience and economy of passengers and shippers for the business to be conducted as it is, without any attempted separation in conducting upon the same trains and with the same facilities both the state and interstate business.

3. Missouri is peculiarly located so far as concerns the question whether the fixing a state rate directly affects an interstate rate. The state is midway between the Great Lakes and the Gulf of Mexico, and midway between the Atlantic and Pacific Oceans. The vast quantities of traffic, and volumes of travel between the east and west and north and south necessarily cross the entire state. Two great rivers bound the state upon the east and west. Upon these rivers are located great markets and commercial centers Those at Kansas City being the largest between the Mississippi River and the Rocky Mountains. All freight rates from the east to the west and vice versa are made up of a rate to and from these rivers plus the rate across the state. This has always been so and whatever the reason therefor, as a practical railway problem will always be so if intelligent, experienced and practical railway men are permitted to fix rates upon a fair, reasonable and intelligent basis. The river points, therefore, have become and are rate basing centers. Great cities and markets have been built up by reason of and upon the faith of this fact. At such points great railroad properties have been ac-
179 quired and extensive terminals provided in view thereof. In many instances the railways there terminate. If a different method were adopted a chaotic condition would be created, business of these cities and markets would be seriously and unduly disturbed

and embarrassed and investments there made largely affected. The actual result is that the short line mileage across the state actually controls and fixes the freight rate by every other railway, no matter what the distance or points of origin and destination may be. From Hannibal to St. Joseph, Missouri, is 198 miles by the Chicago, Burlington & Quincy Railway. This is the shortest rail distance between the rivers. From St. Louis to St. Joseph it is at least 300 miles, to Kansas City 280 and upward. Whenever a freight rate per mile is fixed for the 198 miles, the short route between the rivers, the total rate between all Mississippi and Missouri River points must conform thereto even though the distance be 300 or more miles. This situation applies to every competitive point between the rivers of which there are many of magnitude and importance. The traffic between St. Louis and Missouri river points, both state and interstate, is enormous. Every railway carrying freight must be at the expense of carrying it from 280 to 300 or more miles, yet receive therefor a rate based upon a distance of 198 miles. Unless it should do so it would not be able to handle enough freight between river points to justify the running of trains. Unless the rates were so fixed no substantial business would be done between the river points because every shipper to or from the east would be compelled to ship by the short line. St. Louis merchants could not compete for western business. In the passenger traffic the universal rule is that the short line between any two stations fixes and established the rate. In other words, the rate being fixed per mile, the longer route will not be able to carry passengers between any two points if its total rate exceeds the short line rate. In actual railway operation the state line is wholly arbitrary. Unless the mileage rate is the
180 same, passengers will, if the state rate be lower than the interstate, buy tickets or pay fare to a state line station and there provide themselves anew with tickets, thus making an interstate journey partly state. Experience has demonstrated this to be noticeably true. In July and August, 1907, when a two cent fare was in force in Missouri upon State business and three cents upon interstate this practice became quite general. It became absolutely necessary as a practical railroad question to put in force the same rate for state and interstate travel; otherwise it would have become impossible to keep track of a large part of the interstate travel and a large unnecessary expense been incurred by the work imposed at the state line stations. For these and many other reasons shown by the evidence, including those mentioned in paragraph 4, it is a fact that no mileage state rate, for freight or passengers, extending across the state of Missouri, can be established which does not actually and immediately directly affect the interstate rate, not only in but out of the state. It therefore must, as a fact, be said that the rates fixed by the laws complained of in the bills, do directly and immediately affect and regulate interstate commerce.

4. Two of the great trunk lines in Missouri are the Missouri Pacific and the Chicago, Burlington & Quincy Railways. Both extend from St. Louis to St. Joseph,—the Burlington lines between these points are wholly within the state; those of the Missouri Pacific pass

out of Missouri at Kansas City, into Kansas, leaving that state at Atchison, coming again into Missouri. All traffic over the Missouri Pacific from St. Louis to St. Joseph is interstate. If the state rate, freight or passenger, be lawfully fixed the Burlington must conform thereto on its St. Louis and St. Joseph business. When it so does this rate must be met by the Missouri Pacific or else the latter will get none of the business. This situation is applicable to all the Missouri Pacific business between St. Joseph and Kansas City and all points east thereof. The Burlington and other roads as direct
181 and as connecting carriers compete therefor. A very large and substantial part of the business of the Missouri Pacific is carried from St. Joseph to Kansas City and St. Joseph and points between and is thus affected. The same situation exists as to other companies. The Chicago Great Western Railway between St. Joseph and Kansas City runs from Missouri, thence into Kansas, and back into Missouri, making the business interstate. The lines of the Burlington and St. Joseph & Grand Island companies between these points are wholly within the state. The lines of the St. Louis & San Francisco and Kansas City, Southern companies between Kansas City and Joplin and the great lead and zinc mining districts of Missouri, start from Kansas City, Missouri, extend into Kansas and thence back into Missouri, thus making the journey interstate. The Missouri Pacific line between these points is wholly state. The Missouri, Kansas & Texas also runs from Missouri into Kansas and back into Missouri, competing with lines wholly in the state. In each of these instances a very large and substantial part of the business of each of said companies originates and terminates in Missouri yet by passing in its journey out of the state is interstate. In each instance if the competing line wholly in the state is by state law compelled to lower its rate, those doing such interstate business must likewise reduce their rates between the same state points or do none of the business. All the complainants have joint tariffs, with the others, doing one with the other, a through connecting business. The laws complained of in the bills do therefore directly affect and interfere with a substantial part of traffic of the state which is interstate commerce, originating and ending in the state, particularly much of that kind upon the lines of the Missouri Pacific, Chicago Great Western, St. Louis & San Francisco and Missouri, Kansas & Texas companies. The laws complained of are general in their nature, making neither classification nor exception. So by reason of the peculiar location of many of the large roads in Missouri a unique situation is presented whereby, wholly independent of the facts set forth in para-
182 graph 3, state rates certainly directly and immediately affect interstate traffic both freight and passenger. So great an amount of interstate business is affected thereby that if it was permitted to be free from state regulation, and the other companies in the state refused to conform to the rates fixed by the laws by the bills herein questioned, they as competitors, whether original or connecting carriers, would lose so much state business that they would be compelled to carry at an actual loss that which remained of that class of traffic.

5. Much difficulty in the cases has been obviated by complainants making up and delivering to defendants, from time to time, statements showing the earnings and expenses for certain periods, which seem to have been treated by the parties as sufficiently illustrative of the situation to enable a fair determination of the controversy to be had. Complainants have extended to defendants every facility, given them the fullest opportunity, and granted them every possible courtesy, so that any experts for defendant have had every opportunity to call for any figures and to make up any statement upon any theory desired. Inasmuch as the same periods of time, in the various statements submitted, were adopted by both parties, the findings as to each company will follow along the same line, and actually mean that such period should be considered as representative of the situation generally. Inasmuch as the freight act of 1907 covered the same commodities as the Acts of 1905 but allowed an increased earning, it follows as was conceded by defendants at the trial, if the freight act of 1907 was confiscatory, that of 1905 was likewise confiscatory but to a greater degree. It must therefore be said that the rates fixed by the laws complained of in the bills do, in fact, directly and immediately affect interstate rates and directly regulate a large and substantial part of interstate commerce of the state and interstate carriage, freight and passenger, upon the Missouri Pacific Chicago & Great Western, St. Louis & San Francisco, Kansas City Southern and Missouri, Kansas & Texas Railways and their connecting carriers.

183 6. The earnings in a state, from state and interstate business, can be ascertained with a reasonable degree of certainty from the way-bills, tickets and cash fares. The books and papers of complainants are and always have been so made and kept that it is a mere matter of expense though considerable, and detail work, though extensive, to make the ascertainments. The freight earnings consist of earnings from transportation and from miscellaneous services, such as switching, demurrage, storage and track rentals. Passenger earnings are those from passenger fares and miscellaneous services, such, for instance, as mail, express and excess baggage.

7. No serious difference has arisen in the separate cases as to the ascertainment of the expense of doing the entire passenger, freight or miscellaneous business in the state. So, with a reasonable degree of certainty, and with little controversy this division can be and has been made. Inasmuch as these expenses are incurred by the use of the same properties, car tracks and facilities, there is not and never has been any certain known fixed rule or method by which, to a mathematical cerainty, these different expenses so separated can be divided, as between state and interstate business. The method to be adopted in making the division was the chief serious controversy at the trial. Complainants claim that the division should be upon the revenue basis, in which way there can in the first instance, be assigned to each class of business, freight, miscellaneous freight, passenger and miscellaneous passenger, or to all or any of them combined, a reasonable and fair amount as state and interstate expenses respectively, to which should be added such sum as would represent

the extra cost of doing state over interstate business. The defendants claim that the division should be, for freight, upon the ton-mile basis, and for passenger, upon the passenger-mile basis, and that miscellaneous freight earnings and expenses should be included in freight and miscellaneous passenger earnings in those of passenger.

184 As the revenue proportion is, in most instances, nearly twice as much as ton-mile proportion, the reason for the difference is apparent. By the revenue basis is meant assigning as expense of state business, of any particular kind or kinds, such proportion of the total expense in the state on that class of business as the earnings from that class of state business bears to all the earnings (state and interstate) from the same class; or as often put, ascertain what proportion all expenses are of all earnings, and then multiply the state earnings of any class thereby, thus finding a sum which would equal the expenses to be there assigned. By the ton-mile basis is meant the assignment to state freight expenses such proportion of all freight expense as the number of tons per mile of state freight bears to the total ton-miles of all freight hauled in the state. By the passenger-mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears to the whole number of passengers (state and interstate) carried one mile.

Another method of division of freight expense is upon the basis of the number of tons carried, regardless of distance. It results there is little difference, as a division on this basis is practically the same as that which is shown by the revenue basis. Neither party has adopted it as a basis of division.

8. These being no method by which the division of expenses, as between state and inter-state, can be made to a mathematical certainty, calculations have been made upon every reasonable basis, and a determination reached, in the light of all the evidence, of a reasonable sum, in money, which should be actually charged as the expense of doing each class of state business. To this should be added the extra cost of doing the state business. The sums hereinafter found were first actually ascertained by a division upon a revenue basis. Then, after considering all things, they were and are adopted as the proper sums to reasonably represent an actual fair ap-

185 portionment of expenses as between state and inter-state business. Any apportionment of freight expenses, upon a ton mile basis would charge too small an amount as state expense. This would make necessary the use of a multiple of extra cost, large enough to make the sum total of state freight expense equal that hereinafter accurately found to reasonably represent the cost as it ought from the evidence to be found. Any apportionment of passenger expense, upon the passenger mile or any other basis which would not make the state passenger expense equal in dollars the sum hereinafter found, would be unfair and unjust.

9. All things considered, the evidence duly weighed, there being no abnormal features, the cost of doing the different classes of state business, ascertained as between state and interstate, upon a revenue basis, brings a result in dollars in Missouri which is fair, just, reason-

able and representative. That method of ascertainment is much better and more satisfactory than any other which has, by any one, been suggested. If the law be that some one theory must be adopted, then the revenue basis would be and is hereby accepted as correct. However, in these cases, although the ascertainment is actually made upon the revenue basis, the figures, when ascertained, have been considered in the light of all the facts and circumstances, in evidence, and then in and of themselves and independently of their method of ascertainment, also adopted as fairly and justly representing the cost and expense of doing each class of state business.

10. There is an extra cost and expense of doing state over interstate business, both as to freight and passenger. This extra cost is as to each complainant, for freight, much in excess of fifty per cent. Of all freight expense, and for passenger in excess of twenty-five per cent. of all passenger expense. While the extra cost is much in excess of these figures, yet, for the purpose of this case, they may, as to each complainant, be adopted as the minimum. How much more the extra cost is, need not be now determined, because at the
186 minimum figures thus fixed, the rates in question are, in view of the case, unreasonable and confiscatory. If the ton-mile method of apportionment of freight expenses were adopted, the multiple of extra cost of doing each class of state business would be fixed as such figures as would make the entire expense as increased, equal to that hereinafter found, because, the total amount as found, regardless of the method of finding same, being that which fairly represents the minimum actual cost and expense of doing such state business.

11. After ascertaining the cost of doing the different classes of state business, and deducting same from the earnings there should be and there is deducted from the state freight earnings of each complainant such sum as would equal its diminution of earnings of each complainant such sum as would equal its diminution of earnings upon the commodities covered by the act, if the rates thereon fixed thereby had been charged. This has been done as to each complainant.

12. In the case of each complainant, other than the St. Louis & Hannibal Railway Company, and Kansas City, Clinton & Springfield Railway Company, the earnings should be sufficient, in any event, to fully meet its proportion of the interest upon the bonded indebtedness, there being nothing out of the ordinary as to such indebtedness, and nothing to indicate that the property was unduly bonded. Such interest has been regularly paid for years and there is nothing to indicate any improper bonding. The proportion of the property assignable to any of the state traffic, upon a revenue basis, is actually worth more than enough to justify such return. The proportions of the property of the St. Louis & Hannibal and the Kansas City, Clinton & Springfield respectively assignable to any of the state traffic, are worth enough to justify some substantial return. However, irrespective of this finding and eliminating any question of interest, the rates in question are as hereinafter shown insufficient to make a fair and reasonable return upon the value of the portion of the property of each complainant devoted to the use.

187 13. Each class of business of each complainant should have assigned to it its fair proportion of the value of the entire property in the state as that upon which it is entitled to a return. Such a division hereafter made, is upon a revenue basis. The result reached thereby is so fair, just and reasonable that they are, in view of all the facts, adopted, regardless of the method of ascertainment. There has been fixed a minimum valuation for the railway property in the state. The property is worth at least that much. There is and should be assigned to each class of state business such proportion of such valuation as the gross state revenue of that class, bears to the gross revenue in the state. When this is done there is ascertained a sum which, in any event, is, considering all of the evidence, and regardless of the method by which the result is reached, the very least value upon which a reasonable return should be had as to that class of business. These figures, as to values, are probably less than the actual values, but for the purposes of the cases are taken as figures representing a minimum valuation upon which at least a fair return should be had, if any, because the rates in question at such valuation are confiscatory. It is therefore unnecessary to consider how much more the property is worth.

14. There are, therefore, in the cases tried, findings made and hereinafter set forth, showing: (*a*) All earnings, state and interstate, freight, miscellaneous freight, passenger and miscellaneous passenger; the proportions which state and interstate freight and passenger earnings (exclusive of miscellaneous) bear to all combined state and interstate freight and all passenger earnings (including miscellaneous) respectively, and that which they bear to all earnings in the state. (*b*) Miscellaneous freight and miscellaneous passenger earnings, (undivided as between state and interstate) with the proportions they are of all earnings and of, respectively, all freight and passenger. (*c*) All expenses, divided in proportion to
188 revenue, as between all kinds of freight and passenger business, including miscellaneous, but undivided as between state and interstate. (*d*) A deduction from all state freight (exclusive of miscellaneous) of such proportion of the expenses of all freight and all passenger respectively, as the freight and passenger earnings respectively, exclusive of miscellaneous, bore to all freight and passenger earnings. (*e*) A like deduction of extra cost of doing such business respectively, including miscellaneous. (*f*) A deduction from freight earnings of sums equalling the diminution which would have been caused if the rates fixed by the act had been charged. (*g*) The value of that portion of complainants' property assignable to the particular traffic. This is ascertained by taking, for each class of business, of the entire value in the state such proportion as the earnings upon that portion of the business bear to all the earnings in the state.

The results thus reached and the sums finally ascertained irrespective of the methods by which the apportionments are made, in the light of all the facts and circumstances in evidence, are fair and just and reasonable, and such as ought, in each instance, to be fixed.

Anything in the way of a return less than six per cent. interest upon the part of the property assignable to any traffic in question is unreasonable and confiscatory.

15. The complainants made out and served their statements upon defendants, not dividing the miscellaneous as between state and interstate, for the reasons therein thus set forth:

"Inasmuch as differences might arise between complainant and the state as to the method of apportioning miscellaneous freight, and mail, express and miscellaneous passenger earnings, and as no question as to such earnings is here involved, same have, to avoid confusion, and unnecessary controversy, been left undivided as between state and interstate earnings."

No request was ever made for such a division, though it could have been made by complainants had a request been made therefor by defendants. The actual division could have been made by defendants had they so desired. If an accurate division were
189 necessary it would even now be called for, regardless of the time necessary to be devoted to the work, though neither party is entitled to have the case delayed to obtain the information. To do so would make necessary a possible change in some percentages, though not enough to change the result. As neither party thought an actual division was necessary, a court could well assume as the proofs clearly show that if made, the final result of the case would not be changed thereby. As a matter of fact it would be fairer and better to deal alone with the effect of the laws in question upon strictly freight and passenger business. At the trial, however, the state's experts made an estimated division of these miscellaneous earnings, both freight and passenger, as between state and interstate, by arbitrarily assigning the same in the proportion of the revenue received from purely freight and purely passenger earnings respectively. This was an arbitrary basis, unwarranted in fact and made in a method which assigned entirely too great a proportion to the state business and improperly and unnecessarily enlarged the state earnings. It is, therefore, rejected. From the figures hereinafter set forth, it will be seen that the miscellanous earnings are but a small proportion of all earnings, especially of the freight. To avoid confusion in making new tabulations, the arbitrary division made by the state's experts may be assumed to be correct still this would make no difference in the result of the cases. This because there should be charged against these earnings a sum equalling the revenue proportion of all the expense of freight and passenger respectively, plus an extra cost of doing state business. The sums ascertained in this way would be the fair, just and equitable charge as the minimum expense of doing such business. When so made there should be assigned as the valuation upon which there should be a return, such proportion of the entire value as the respective earnings from miscellaneous freight and passenger, bear to all earnings. When this is done it is apparent that no fair return is received upon this class of
190 business. Hence, if the miscellaneous earnings were added to the freight and passenger earnings respectively, so as to consider all freight as a whole, and also all passenger as a whole, the re-

sult reached will not and could not be changed. Had a desire been, in proper time, expressed for an accurate division of miscellaneous earnings as between state and Inter-state, according to the facts, it would have been ascertained, so that the loss would have been shown, considering freight and passenger earnings alone, and also such loss considering the miscellaneous with each. However, the miscellaneous passenger business consists in the main of mail and express, and it is difficult to see why; in ascertaining the losses or gains under a two cent fare law there should be included either losses or gains from the miscellaneous earnings, especially when the main portion of the earnings are more in the nature of freight earnings from a passenger service.

16. The expense of doing all the state business, when ascertained on the revenue basis, estimating the extra cost of doing the state freight business at the minimum of at least 50 per cent, and the passenger business at the minimum of at least 25 per cent, shows a sum which would be fair and reasonable to adopt as the cost of doing the entire state business. So that, if all the state business be considered, as a whole and be done at the rates now in existence and those fixed by the laws questioned in the bills, there is no doubt that there is no reasonable or compensatory return upon the value of the portion of the property assignable to the whole or the state traffic. It is not here necessary to determine whether, as many competent railroad managers say, that no state rates are compensatory. It is true that such will be the result in Missouri, if the laws in question are enforced. There is a reason why, there, it is true. That state is peculiar in its central location, its class of business, and the location of its cities. The short line between the rivers, as a transportation problem, necessarily fixes the rate for the enormous freight traffic passing to and from the east and the west. There are
191 located at the two rivers two of the great markets of the United States. Freight rates are, by state laws and state commissions, fixed to a large extent upon a mileage basis. The result is that the vast traffic between Kansas City and St. Louis is done at the expense of a carriage of 280 miles and upwards, whereas, the compensation of the carrier is fixed upon the theory of a carriage of 198 miles. So with the passenger business. There are many large centers upon each side of the state, particularly the great cities, St. Louis, Kansas City and St. Joseph. There are many large competitive cities in the interior. There are great and marked differences in the respective distances between comptitive points on the many different lines in the state. As passenger rates are fixed by law upon the mileage basis the necessary result is that every company has numerous instances in which it is put to the expense of a carriage of a long distance but is paid at a rate for a much shorter distance. Taking these facts into consideration, together with the extra cost of doing state business, it is a fact, whether all state business be treated as a whole or subdivided into classes, the rates now in existence and those fixed by the laws in question, fail to bring any fair or substantial return; nothing like one-half of the rate of interest which is fixed by law.

17. The adoption of the two cent fare did not cause any substantial increase in travel. At first a great many persons rode as state passengers to and from the state line, so that the state obtained more revenue than that to which it was entitled. Any statement of the passenger business which includes July and August, 1907, is unduly fair to the state. However, state and interstate fares soon became the same, and the longer the period over which the figures are extended the greater will be the loss shown.

18. If the companies had, after the two-cent passenger rate went into effect, been permitted to charge the amount which they, prior thereto, actually received per passenger per mile, they would
192 have received this much more money:

Name of road.	Period covered months.	From state passengers.	From inter-state passengers.
St. L. & S. F. R. R. Co.....	12	666,008.72	509,738.63
A. T. & S. F. Ry. Co.....	12	30,885.52	66,271.03
C. R. I. & P. Ry. Co. and St. L. K. C. & C. Ry. Co.....	12	124,469.14	111,178.60
K. C. So. Ry. Co.....	12	7,044.49	27,260.75
St. L. & H. Ry. Co.....	12	37,275.38	145.23
M. K. & T. Ry. Co.....	12	140,593.46	63,815.12
K. C. C. & S. Ry. Co.....	12	14,654.57	10,846.91
C. B. & Q. R. R. Co.....	12	394,878.77	261,556.41
C. G. W. Ry. Co.....	12	65,945.96	46,162.17

19. In the case of the St. Louis & San Francisco Railway there were included in the expenses sums paid as rentals under a lease of the Kansas City, Fort Scott & Memphis Railway. The Common stock of the latter company is owned by the St. Louis & San Francisco, which operates the property under a lease, requiring it to pay to the holders of preferred stock of the Memphis as a rental a sum equal to a four per-cent annual dividend thereon. There is nothing to impeach the fairness of the lease or its terms. It has been in existence for years. This rental has always been treated as an operating expense and not included in the fixed charges, nor included in the stock issue or bonded indebtedness or interest charge. It is therefore treated as it should be and in fact is, part of the expenses. The total amount charged in the accounts hereinafter set forth as part of the state freight expense is $8,428.56 and as part of the state passenger expense $7,443.68. If these items should be eliminated from the expenses, there would be no difference in the result.

20. The minimum values of the railway properties in the state belonging to and used by the complainants in Missouri are:

193

	Miles.	Value.	Value per mile.
St. Louis and San Francisco (1907)	1,688.89	61,238,414.70	36,259.00
Atchison, Topeka & Santa Fe (1907)	348.31	15,091,212.00	43,326.00
Chicago, Rock Island & Pacific (1907)	515.48	19,102,507.59	37,058.00
Kansas City Southern (1908)	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal (1907)	120.61	1,143,007.02	9,477.00
Missouri, Kansas & Texas (1908)	506.21	20,894,229.93	41,276.00
Chicago, Burlington & Quincy (1908)	1,136.34	53,172,907.83	46,793.00
Kansas City, Clinton & Springfield (1907)	151.01	2,380,222.48	15,762.00
Chicago Great Western (1907)	84.43	3,605,236.38	42,701.00

The sums thus found as the minimum values in all cases except those of the Kansas City, Clinton & Springfield and St. Louis & Hannibal, are in fact the same as estimated by the assessing officers of Missouri. In the cases of those two companies it is one third less. Nevertheless the valuations thus found are, aside from and independently of the fact that they were estimates of the state, found in view of all the facts and circumstances in evidence to be the minimum fair and reasonable values of the properties.

21. There are now made and submitted, tables showing the earnings and expenses and assignable fixed charges and value of the complainants' property in the cases tried. From the expenses, even taxes and rentals are excluded, though probably they should not be. The periods over which the findings extend were, at the trial, adopted by the parties as fairly representative. They are in fact sufficiently fairly representative of the actual earnings and expenses, under ordinary and usual conditions, to be used as tests to determine whether the rates permit of a reasonable return upon the investment. They were supported by statements covering other years and longer periods. These tables treat state freight as distinct from miscellaneous freight, and state passenger as distinct from miscellaneous passenger, but do not charge against either freight or passenger earnings any expense of doing miscellaneous business, nor do they include in the assignable proportion of value or interest any
194 part of that assignable to the miscellaneous business. Nor do these tables include the St. Louis Southwestern, Missouri Pacific, St. Louis, Iron Mountain & Southern, Quincy, Omaha & Kansas City, Wabash, St. Joseph & Grand Island, Chicago, Milwaukee & St. Paul, or Chicago & Alton Railways. This because the cases of these companies, by stipulations, are to abide the result in other cases as to which findings are made. These tabulations contain the figures agreed upon by the experts for both sides if the court should adopt the results reached by a revenue basis.

(A) St. Louis and San Francisco R. R. Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30th, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$2,214,002.82	76.94	54.68
State freight	577,192.84	20.04	14.26
Miscellaneous freight	86,814.57	3.02	2.14
Total	2,878,010.23	100.	71.08
		Per cent of all passenger earnings.	
Interstate passenger	368,687.43	31.49	9.11
State passenger	599,051.59	51.17	14.79
Miscellaneous passenger	203,077.28	17.34	5.02
Total	1,170,816.30	100.	28.92
Grand Total	4,048,826.53	.....	100.

(3) Expenses, Less Taxes & Rentals, Undivided between State and Interstate.

All freight expense, including miscellaneous..... $1,802,813.26
All passenger expense including miscellaneous..... 974,816.61

195

	Freight.	Passenger.
Percentage of expenses to earnings.....	62.64%	83.26%

(4) Taxes and Rentals.

Freight	$112,452.04
Passenger	38,979.63
Total	151,431.67

(5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above shown are.....	577,192.84	599,051.59
Expense of state business.....	361,644.33	498,716.20
Leaving.....	215,548.51	100,335.39
Less Taxes & Rentals (Par. 4).....	22,760.29	20,097.90
Leaving.....	192,788.22	80,237.49
Deduct extra cost of state business freight estimated at 50%, passenger 25%.....	131,425.08	53,907.36
Leaving.....	61,363.14	26,330.13
Deduct diminution in earnings if the state freight rates in question had been charged	11,389.27	.....
Leaving as surplus.....	49,973.87	26,330.13

(6) Valuation.

Valuation of property in state is $61,238,414.70 of which 14.26% is assignable to state freight and 14.79% to state passenger business..	2,183,149.48	2,264,290.38
Six per cent upon this part for the period covered is.....	130,988.97	135,857.42

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5, is	2.29%	1.16%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6 is....	$116,792.45	$121,133.27

196 (B) ATCHISON, TOPEKA & SANTA FE R. R. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months ending Dec. 31, 1907 and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	1,872,915.00	90.05	67.72
State freight	141,133.00	6.79	5.10
Miscellaneous freight	65,833.56	3.16	2.38
Total	2,079,881.56	100.	75.20
		Per cent of all passenger earnings.	
Interstate passenger	355,318.12	51.81	12.85
State passenger	104,370.19	15.22	3.77
Miscellaneous passenger	226,080.00	32.97	8.18
Total	685,768.31	100.	24.80
Grand Total	2,765,649.87	.....	100.

(3) Expenses, Less Taxes & Rentals, Undivided Between State and Interstate.

All freight expense including miscellaneous	1,382,738.65
All passenger expense, including miscellaneous	572,167.20

	Freight.	Passenger.
Percentage of expenses to earnings	66.48%	83.43%

(4) Taxes & Rentals.

Freight	32,361.50
Passenger	10,854.04
Total	43,215.54

197 (5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	141,133.00	104,370.19
Expense of state business	92,581.89	87,834.09
Leaving	48,551.11	16,536.10
Less Taxes & Rental	3,503.41	901.74
Leaving	45,047.70	15,634.36
Deduct extra cost of state business freight estimated at 50%, passenger 25%	41,859.55	17,947.71
Leaving	3,188.15	Def. 2,313.35

Deduct diminution in earnings if the state freight rates in question had been charged	13,885.87	.....
Leaving	Def. 10,697.72	Def. 2,313.35

(6) Valuation.

Valuation of property in state is $15,091,212.00, of which 5.10% is assignable to state freight, and 3.77% to state passenger business	384,825.91	284,469.35
Six per cent upon this part for the period covered is	23,089.35	17,068.16

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subsivision 6 is	17,934.56	13,257.51

198 (C) CHICAGO, ROCK ISLAND & PACIFIC RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for three months ending September 30, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$665,228.16	79.38	59.86
State freight	150,953.68	18.02	13.58
Miscellaneous freight	21,815.70	2.60	1.96
Total	$837,997.54	100.	75.40
		Per cent of all passenger earnings.	
Interstate passenger	$113,524.21	41.53	10.22
State passenger	114,853.04	42.02	10.53
Miscellaneous passenger	44,980.08	16.45	4.05
Total	$273,357.33	100.	24.60
Grand Total	1,111,354.87	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$619,199.73
All passenger expense, including miscellaneous	317,633.62

	Freight.	Passenger.
Percentages of expenses to earnings	73.89%	116.20%

(4) Taxes and Rentals.

Freight	$74,227.43
Passenger	21,015.44
Total	$95,242.87

199 (5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$150,953.68	$114,853.04
Expense of state business	111,579.80	133,469.65
Leaving	$39,373.88	Def. 18.616.61
Less taxes and rentals	13,375.78	8,830.68
Leaving	$25,998.10	Def. 27,447.29
Deduct extra cost of state business freight estimated at 50%, passenger 25%	41,919.82	17,501.61
Leaving	Def.$15,921.72	Def. 44,948.90
Deduct diminution in earnings if the state freight rates in question had been charged	9,989.43	.....
Leaving	Def.$25,911.15	Def. 44,948.90

(6) Valuation.

Valuation of property in state is $19,102,507.59, of which 13.58% is assignable to state freight and 10.33% to state passenger business	$648,530.15	$493,322.26
Six per cent upon this part for the period covered is	$38,911.81	$29,599.34

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$24,907.02	$18,946.21

200 (D) KANSAS CITY SOUTHERN RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this Company *are* for six months ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$702,249.91	79.35	67.11
State freight	38,748.76	4.38	3.70
Miscellaneous freight	144,046.62	16.27	13.77
Total	$885,045.29	100.	84.58
		Per cent of all passenger earnings.	
Interstate passenger	$89,504.58	55.47	8.55
State passenger	31,865.28	19.75	3.05
Miscellaneous passenger	39,973.54	24.78	3.82
Total	$161,343.40	100.	15.42
Grand Total	$1,046,388.69	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous	$571,297.54
All passenger expense, including miscellaneous	141,432.56

	Freight.	Passenger.
Percentages of expenses to earnings	64.55%	87.66%

(4) Taxes and Rentals.

Freight	$22,331.70
Passenger	3,737.37
Total	$26,069.07

201 (5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$38,748.76	$31,865.28
Expense of state business	25,022.83	27,932.93
Leaving	$13,725.93	3,932.35
Less taxes and rentals	978.13	738.13
Leaving	$12,747.80	3,194.22
Deduct extra cost of state business freight estimated at 50%, passenger 25%	11,711.60	5,346.15
Leaving	$1,036.20	Def. 2,151.93
Deduct diminution in earnings if the state freight rate in question had been charged	2,957.58	.....
Leaving	Def. $1,921.38	Def. $2,151.93

(6) Valuation.

Valuation of property in state is $8,039,084.40, of which 3.70% is assignable to state freight, and 3.05% to state passenger business	$148,723.06	$122,596.04
Six per cent upon this part for the period covered is	$8,923.38	7,355.76

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$5,295.38	$4,365.11

202 (E) St. Louis & Hannibal Railway Company.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight.....	$51,735.05	36.25	24.61
State freight.....	87,941.99	61.62	41.84
Miscellaneous freight.....	3,044.11	2.13	1.45
Total.....	$142,721.15	100.	67.90
		Per cent of all passenger earnings.	
Interstate passenger.....	$198.19	0.29	0.09
State passenger.....	52,667.38	78.04	25.05
Miscellaneous passenger....	14,619.99	21.67	6.96
Total.....	$67,485.56	100.	32.10
Grand Total.....	210,206.71	.....	100.

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$117,908.81
All passenger expense, including miscellaneous.....	68,343.04

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.61%	101.27%

(4) Taxes and Rentals.

Freight	$5,994.07
Passenger	2,273.61
Total.....	$8,267.68

203 (5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are.....	$87,941.99	$52,667.38
Expense of state business.....	72,655.40	53,334.91
Leaving.....	$15,286.59	Def. 667.53
Less taxes and rentals.....	3,693.55	1,774.32
Leaving.....	$11,593.04	Def. 2,441.85
Deduct extra cost of state business freight estimated at 50%, passenger 25%.....	12,026.69	2,444.68
Leaving.....	**Def. $433.65**	**Def. 4,886.53**

Deduct diminution in earnings if the state freight rates in question had been charged.....	15,126.02	.....
Leaving.....	Def. $15,559.67	Def. 4,886.53

(6) Valuation.

Valuation of property in state is $1,143,007.02, *if* which 41.84% is assignable to state freight, and 25.05% to state passenger business.....	$478,234.14	$286,323.26
Six per cent upon this part for the period covered is.....	28,694.05	17,179.40

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is.....	Nothing %	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is.....	$16,359.44	$9,794.55

204 (F) MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for July, August, October, November and December, 1907, and January, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight.....	$1,333,455.26	81.73	57.89
State freight.....	277,416.52	17.01	12.04
Miscellaneous freight.....	20,603.37	1.26	0.89
Total.....	$1,631,475.15	100.	70.82

		Per cent of all passenger earnings.	
Interstate passenger.....	$303,214.54	45.12	13.16
State passenger.....	246,368.53	36.66	10.70
Miscellaneous passenger..	122,458.22	18.22	5.32
Total.....	$672,041.29	100.	29.18
Grand Total.....	2,303,516.44	.....	100.00

(3) Expenses, Less Taxes and Rentals, Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$1,010,643.65
All passenger expense, including miscellaneous.....	516,589.98

	Freight.	Passenger.
Percentages of expense to earnings.....	61.95%	76.87%

(4) Taxes and Rentals.

Freight	$119,017.87
Passenger	58,465.49
Total.....	$177,483.36

205 (5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$277,416.52	$246,368.53
Expenses of state business.....	$171,910.48	$189,381.89
Leaving.....	$105,506.04	$56,986.64
Less taxes and rentals.....	$20,244.94	$21,433.45
Leaving.....	$85,261.10	$35,553.19
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$66,590.77	$27,482.59
Leaving.....	$18,670.33	$8,070.60
Deduct diminution in earnings if the state freight rates in question had been charged	$20,222.85	.....
Leaving as surplus.....	Def. $1,552.52	$8,070.60

(6) Valuation.

Valuation of property in state is $20,894,229.93 of which 12.04% is assignable to state freight and 10.70% to state passenger business	$1,257,832.64	1,117,841.30
Six per cent upon this part for the period covered is	$75,469.96	67,070.48

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	Nothing %	0.72%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$62,439.68	$55,490.41

206 (G) CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$6,454,699.87	78.75	52.40
State freight	$1,580,329.64	19.28	12.83
Miscellaneous freight	$161,579.41	1.97	1.31
Total	$8,196,608.92	100.	66.54
		Per cent of all passenger earnings.	
Interstate passenger	$1,777,788.27	43.15	14.43
State passenger	$1,611,702.92	39.11	13.09
Miscellaneous passenger	$731,021.89	17.74	5.94
Total	$4,120,513.08	100.	33.46
Grand Total	$12,317,122.00	.....	100.

(3) Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.

All freight expense, including miscellaneous.....	$6,793,610.60
All passenger expense, including miscellaneous.....	$3,527,311.81

	Freight.	Passenger.
Percentages of expenses to earnings.....	82.88	85.60

(4) Taxes and Rentals.

Freight	Cr. $12,235.30
Passenger	Cr. $6,152.58
Total.....	Cr. $18,387.88

207 (5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are.....	$1,580,529.64	$1,611,702.92
Expense of state business.....	$1,324,453.83	$1,489,746.71
Leaving.....	$256,075.81	$121,956.21
Less Taxes and rentals.....	Cr. $2,487.99	2,798.50
Leaving.....	$258,563.80	$124,754.71
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$484,129.29	$158,205.70
Leaving.....	Def. $225,565.49	Def. $33,450.99
Deduct diminution in earnings if the state freight rates in question had been charged...	$112,533.71	$.....
Leaving.....	Def. $338,099.20	Def. $33,450.99

(6) Valuation.

Valuation of property in state is $53,172,907.83, of which 12.83% is assignable to state freight, and 13.09% to state passenger business	$6,822,084.07	$6,960,333.63
Six per cent upon this part for the period covered is.....	$409,325.04	$417,620.02

(7) Return on Value.

In the way of a return upon the assignable value found in subdivision 6, the deficit shown in subdivision 5 is..... Nothing % Nothing %

208 (H) KANSAS CITY, CLINTON & SPRINGFIELD RY. COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for the year ending June 30th, 1908, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$116,893.60	68.27	41.04
State freight	$45,003.15	26.29	15.80
Miscellaneous freight	$9,319.58	5.44	3.27
Total.....	$171,216.33	100.	60.11
		Per cent of all passenger earnings.	
Interstate passenger	$41,145.00	36.22	14.45
State passenger	$47,646.80	41.95	16.73
Miscellaneous passenger	$24,797.39	21.83	8.71
Total.....	$113,589.19	100.	39.89
Grand Total.....	$284,805.52	.....	100.

(3) Expenses (Less Taxes & Rental) Undivided Between State and Interstate.

All freight expense, including miscellaneous..... $98,988.29
All passenger expense, including miscellaneous..... $138,384.77

	Freight.	Passenger.
Percentages of expenses to earnings.....	57.81%	121.83

(4) Taxes and Rentals.

Freight	$9,182.36
Passenger	$5,749.38
Total.....	$14,931.74

209 (5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$45,003.15	$47,646.80
Expense of state business	$26,024.02	$58,052.41
Leaving	$18,979.13	Def. $10,405.61
Less taxes and rentals	$2,414.04	$2,411.86
Leaving	$16,565.09	Def. $12,817.47
Deduct extra cost of state business freight estimated at 50%, passenger 25%	$8,483.30	$4,760.44
Leaving	$8,081.79	Def. $17,577.91
Deduct diminution in earnings if the state freight rates in question had been charged	$2,970.21	.....
Leaving	$5,111.58	Def. $17,577.91

(6) Valuation.

Valuation of property in state is $2,380,222.48, of which 15.80% is assignable to state freight, and 16.73% to state passenger business	$376,075.15	$398,211.22
Six per cent upon this part for the period covered is	$22,564.51	$23,892.67

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	1.36%	Nothing %

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 5, is	$23,881.78	$25,287.48

210 (I) CHICAGO GREAT WESTERN RAILWAY COMPANY.

(1) Period Covered.

The representative period taken by the experts upon both sides as to this company *are* for six months, ending Dec. 31, 1907, and in that period the earnings and expenses were as set forth in subdivisions (1) and (2).

(2) Earnings and Percentages.

Character.	Amount.	Per cent of all freight earnings.	Per cent of all earnings.
Interstate freight	$224,169.58	86.02	57.39
State freight	$29,129.36	11.18	7.45
Miscellaneous freight	$7,280.24	2.80	1.86
Total	$260,579.18	100.	66.70
		Per cent of all passenger earnings.	
Interstate passenger	$72,360.87	55.62	18.53
State passenger	$38,105.03	29.28	9.75
Miscellaneous passenger	$19,643.99	15.10	5.02
Total	$130,109.89	100.	33.30
Grand Total	$390,689.07	.....	100.

(3) Expenses (Less Taxes and Rentals) Undivided Between State and Interstate.

All freight expense, including miscellaneous	$198,887.69
All passenger expense, including miscellaneous	$126,355.88

	Freight.	Passenger.
Percentages of expenses to earnings	76.33%	97.11%

(4) Taxes and Rentals

Freight	$12,294.18
Passenger	$11,312.16
Total	$23,606.34

211 (5) State Earnings and Expenses.

	Freight.	Passenger.
State earnings above (par. 2) shown are	$29,129.36	$38,105.03
Expenses of state business	$22,235.64	$36,996.98
Leaving	$6,893.72	$1,108.05
Less taxes and rentals	$1,374.49	$3,312.25
Leaving	$5,519.23	Def. $2,204.20
Deduct extra cost of state business, freight estimated at 50%, passenger 25%	$9,347.72	$6,090.35
Leaving	Def. $3,828.49	Def. $8,294.55
Deduct diminution in earnings if the state freight rates in question had been charged	$1,893.41	.....
Leaving	Def. $5,721.90	Def. $8,294.55

(6) Valuation.

Valuation of property in state is $3,605,236.38, of which 7.45% is assignable to state freight, and 9.75% to state passenger business	$134,295.06	$175,755.27
Six per cent upon this part for the period covered is	$8,057.70	$10,545.32

(7) Return of Value.

In the way of a return upon the assignable value found in subdivision 6, the surplus shown in subdivision 5 is	.....%	.....%

(8) Interest Charge.

The actual interest charge paid, divided in the assignable proportions shown in subdivision 6, is	$7,164.08	$9,375.81

212 22. If it should be assumed that the state experts correctly divided miscellaneous earnings as between state and interstate, which they did not do, still the fair and reasonable sum to be charged against the state part of these miscellaneous freight and passenger earnings is the revenue proportion of the entire freight and passenger expense plus a minimum extra cost for miscellaneous freight and for miscellaneous passenger. When this is done it clearly appears that even without an allowance for extra cost, the result could not be changed if the findings already made as to state freight and pas-

senger had included the miscellaneous, or had the miscellaneous of each class been separately considered. In no case would there be any fair return. If miscellaneous were considered separately, or if considered with freight and passenger respectively, the result would not be effected. This clearly appears from a tabulation now made as to each company with the exception of the St. Louis and Hannibal Ry. Company and the Kansas City, Clinton and Springfield Ry. Co., which are omitted for the reason that the State compiled and submitted no figures for these roads, showing: (*a*) The state experts' division of miscellaneous, though in fact it is too favorable to the state. (*b*) A deduction from earnings of the percentage proportion of expenses to earnings as done in Smyth v. Ames, 169 U. S. 466, which is the same as the revenue basis. (*c*) The minimum extra cost now found of doing the state over interstate being a mere fraction less than, and practically the same as, found as to the strictly freight and passenger. (*d*) The proportion that state's part of the miscellaneous was of all earnings, and the amount of return to which the company was entitled at six per cent interest upon that proportion of the value of the entire property as hereinbefore and now found to be fair, reasonable and just.

213 (1) St. Louis and San Francisco Railroad Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$17,953.25	00.62	00.44	$125,704.84	10.74	3.10
Less revenue proportion of expense 00.62% freight and 10.74% passenger	$11,177.44			$104,695.30		
Leaving	$6,775.81			$21,009.54		
Less increased cost freight 50%, passenger 25%	$5,588.72			$22,713.23		
Leaving	$1,187.09			Def. $1,703.69		
Less Taxes and Rentals	$697.20			$4,186.41		
	$489.89			Def. $5,890.10		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$4,041.74			$28,475.86		
Total Deficit..	$3,551.85			$34,365.96		

214 (2) Atchison, Topeka and Santa Fe Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,608.35	00.22	00.17	$51,320.16	7.48	1.86
Less revenue proportion of expense 00.22% of freight and 7.48% passenger.	$3,042.02			$42,798.11		
Leaving	$1,566.33			$8,522.05		
Less increased cost freight 50%, passenger 25%.....	$1,521.01			$9,726.84		
Leaving	45.32			Def. 1,204.79		
Less Taxes and rentals	71.20			811.88		
Def..	25.88			Def. 2,016.67		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$769.65			$8,420.90		
Total deficit...	$795.53			$10,437.57		

215 (3) Chicago, Rock Island and Pacific Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$4,035.91	00.48	00.36	$22,620.48	8.28	2.04
Less revenue proportion of expense 00.48% of freight and 8.28% passenger.	$2,966.88			$26,300.06		
Leaving	$1,069.03			Def. $3,679.58		
Less increased cost freight 50%, passenger 25%	$1,483.44			$5,907.98		
Leaving ..Def.	$414.41			Def. $9,587.56		
Less Taxes and Rentals	356.29			1,740.08		
Def.	$770.70			Def. $11,327.64		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,031.54			$5,845.37		
Total deficit...	$1,802.24			$17,173.01		

216 (4) Kansas City Southern Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$7,533.64	00.85	00.72	$10,493.05	6.50	1.00
Less revenue proportion of expense 00.85% freight and 6.50% passenger.	$4,856.03			$9,193.12		
Leaving	$2,677.61			$1,299.93		
Less increased cost freight 50%, passenger 25%	$2,428.02			$2,107.35		
Leaving	249.59			Def. 807.42		
Less taxes and Rentals	$189.82			242.93		
	59.77			Def. $1,050.35		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$1,736.44			$2,411.73		
Total deficit ..	$1,676.67			$3,462.08		

217 (5) Missouri, Kansas and Texas Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$3,547.90	00.22	00.15	$54,885.77	8.17	2.38
Less revenue proportion of expense 00.22% freight and 8.17% passenger.	$2,223.42			$42,205.40		
Leaving	$1,324.48			$12,680.37		
Less increased cost freight 50%, passenger 25%	$1,111.71			$9,505.26		
Leaving	212.77			$3,175.11		
Less taxes and Rentals	261.84			$4,776.63		
Def.	49.07			Def. $1,601.52		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$940.24			$14,918.48		
Total deficit ..	$989.31			$16,520.00		

218 (6) Chicago, Burlington and Quincy Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$31,743.33	00.39	00.26	$347,600.91	8.44	2.82
Less revenue proportion of expense 00.39% freight and 8.44% passenger.	$26.495.08			$297,705.12		
Leaving	$5,248.25			$49,895.79		
Less increased cost freight 50%, passenger 25%	$13,247.54			$66,666.19		
Leaving ..Def.	7,999.29		Def.	16,770.40		
Less Taxes and Rentals .....Cr.	47.72		Cr.	519.28		
Def.	$7,951.57		Def.	$16,251.12		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$8,294.97			$89,968.56		
Total deficit ..	$16,246.54			$106,219.68		

219 (7) Chicago Great Western Railway Company.

	Freight.			Passenger.		
	Amount.	% of all freight.	% of all earnings.	Amount.	% of all pass.	% of all earnings.
Miscellaneous state earnings	$837.23	00.32	00.21	$6,777.18	5.21	1.73
Less revenue proportion of expense 00.32% freight, and 5.21% passenger.	$636.44			$6,583.14		
Leaving	$200.79			$194.04		
Less increased cost freight 50%, passenger 25%	$318.22			$1,541.54		
Leaving ..Def.	117.43		Def.	$1,347.50		
Less taxes . and Rentals	39.34			589.36		
Def.	$156.77		Def.	$1,936.86		
Amount due at 6% interest on portion of value assignable to the state part of the traffic	$227.13			$1,871.12		
Total deficit ..	$383.90			$3,807.98		

220 23. If the commodities affected by the Freight Act of 1907 are alone considered, irrespective of and separate from the earnings from other freight, the rates are plainly confiscatory, and not only fail to bring any return upon the portion of the property devoted to such use, but do not enable any complainant to meet operating expenses. The following tables are in this respect submitted as findings of the earnings of and expenses fairly chargeable to these commodities for a period which is representative.

(1) St. Louis & San Francisco.

For the three months representative period the result is:

The gross earnings upon the commodities affected by the Freight Act of 1907, for three months, are $56,699.26, or $226,797.04 for the year, which is 10.94% of all state freight earnings. Applying this to the state freight statement, there is the result:

All earnings from this class of state freight were for 3 months	$56,699.26
All state freight expenses were $382,405.32 for three months, and 10.94% thereof chargeable to these commodities	41,835.14
	$14,864.12
Diminution if the rates fixed by the Act of 1907 had been charged	11,389.27
	$3,474.85
10.94% of Extra cost at 50%, $130,246.94	$14,249.02
10.94% of Interest, $117,775.28	12,884.62
10.94% of Valuation, $132,091.26	14,450.78

(2) Atchison, Topeka & Santa Fe.

The gross earnings upon the commodities affected by the Freight Act of 1907, for six months are $47,137.00, or $94,274.00 for the year, which is 33.4% of all state freight earnings. Applying
221 this to the findings as to state freight, there is this result:

All earnings from this class of state freight were for six months	$47,137.00
All state freight expenses were $96,085.30 and 33.4% thereof chargeable to these commodities	32,092.49
Leaving	$15,044.51
Diminution if the rates fixed by the Act of 1907 had been charged	$13,885.87
	$1,158.64
33.4% of Extra cost at 50%, $43,443.57	$14,510.15
33.4% of Interest, $17,934.56	5,990.14
33.4% of Valuation, $23,089.55	7,711.91

(3) Chicago, Rock Island & Pacific.

For the three months representative period July, August and September, 1907, there was this result:

Revenue actually received on said commodities being 7.24% of total revenue actually received on all freight traffic in Missouri for said three months.....	$60,639.75
Operating expenses, taxes, rentals and hire of equipment applicable to said revenue for said three months arrived at as follows:	
Total operating expenses, taxes, rentals and hire of equipment, assigned to freight traffic $693,427.16. Proportion (7.24% based on revenue) assigned to commodities affected by maximum freight act of 1907	$50,204.13
Net revenue on said commodities for said three mos....	$10,435.62
Deduct the diminution in revenue if said act of 1907 had been in effect.....	9,989.43
Leaving.....	$446.19
Deduct extra cost of transporting state freight traffic, assuming such extra cost to be 50%. Schedule 4 shows that 50% increased cost increases revenue percentage from 18.02% to 24.79% an increase of 6.77% or 37.57%. 37.57% of 7.24% equals 2.72%. 2.72% of total operating expenses excluding taxes, rentals, etc., $618,100.58, equals	$16,812.34
Deficit.....	$16,366.15

222

(4) Kansas City Southern.

The gross earnings upon commodities affected by the Act of 1907 for six months on $14,014.31 or $28,028.62 for the year, which is 36.17% of all state freight earnings. Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for six months	$14,014.31
All state freight expenses were $26,000.96 and 36.17% of this amount would be.....	9,404.55
Leaving.....	$4,609.76
Diminution if rates fixed by the Act of 1907 had been charged	2,957.58
	$1,652.18
36.17% of extra cost at 50%, $11,735.85.....	$4,244.86
36.17% of interest, $5,295.38.....	1,915.34
36.17% of valuation, $13,768.01.....	4,979.89

(5) St. Louis & Hannibal.

The gross earnings upon commodities affected by the Act of 1907 for one year are 33%, or $29,020.86.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were....	$29,020.86
All state freight expenses were $76,348.95 and 33% of this amount is.....	25,195.15
Leaving.....	3,825.71
Diminution if rates fixed by the Act of 1907 had been charged	15,126.02
Deficit.....	11,300.31
33% of extra cost at 50%, $12,026.69.....	$3,968.81
33% of interest, $16,359.44.....	5,398.61
33% of valuation, $43,041.07.....	14,203.55

(6) Missouri, Kansas & Texas.

Gross earnings on commodities affected by the Act of 1907 for six months (at 33% of total state freight earnings) would be $91,547.45 or $183,094.90 for the year.

Applying this to the state freight statement there is this result:

All earnings from this class of freight were, for six months	$91,547.45
All state freight expenses were $192,155.42 and 33% of this amount would be.....	63,411.29
Leaving.....	$28,136.16
Diminution, if rates fixed by Act of 1907 had been charged	20,222.85
	$7,913.31
33% of extra cost at 50%, $73,879.86.....	$24,380.00
33% of interest, $62,439.68.....	20,605.09
33% of valuation, $75,469.96.....	24,905.09

(7) Chicago, Burlington & Quincy.

The gross earnings upon commodities affected by the Act of 1907 for one year were $526,582.72, which is 31.92% of all state freight earnings, for the year 1905.

Applying this to the state freight statement there is this result:

All earnings from this class of state freight were for one year (31.92% of $1,580,529.64)	$504,505.06
All state freight expenses were $1,322,165.90, and 31.92% of this amount is	422,035.35
Leaving	$82,469.71
Diminution, if the rates fixed by the Act of 1907 had been charged	117,388.07
Deficit	$34,918.36
31.92% of extra cost at 50%, $472,092.76	$150,692.00
31.92% of valuation, $409,325.04	130,656.55

(8) Kansas City, Clinton & Springfield Railway Company.

The gross earnings upon commodities affected by the Act of 1907, for one year are $14,365.00. Since the figures of the company do not show miscellaneous freight earnings, they are estimated at 31.92% of all state freight, based on C. B. & Q. figures, as the percentage is the smallest with that company.

Applying this to the state freight statement there is this result:

Earnings from this class of state freight were, for one year	$14,365.00
All state freight expenses were $28,438.06 and 31.92% of this amount is	9,077.43
Leaving	5,287.57
Diminution, if rates fixed by the Act of 1907 had been charged	2,970.21
	$2,317.36
31.92% of extra cost at 50%, $8,483.30	$2,707.87
31.92% of interest, $23,881.78	7,624.06
31.92% of valuation, $33,846.76	10,803.89

Such an estimate as to this company is reasonable, in that this company is actually losing money upon all its business, so that a finding as to these matters is unnecessary.

(9) Chicago Great Western.

Gross earnings on commodities affected by the Act of 1907 for three months were $7,817.28, or $31,269.12 for the year, which is 57.81% of all state freight earnings.

Applying this to the state freight statement, there is this result:

All earnings from this class of state freight were (earnings of 3 months $7,817.28 x 2)	$15,634.56
All state freight expenses were $23,610.13 and 57.81% of this amount would be	13,649.02
Leaving	$1,985.54
Diminution, if rates fixed by the Act of 1907 had been charged	1,777.34
	$208.20

226

57.81% of extra cost at 50%, $9,347.72	$5,403.92
57.81% of interest, $7,164.08	4,141.55
57.81% of valuation, $8,057.70	4,658.16

(10) Other Companies.

As the cases of the other companies abide the result of that of some other case, a finding in this respect is unnecessary.

227 Afterwards, to-wit, on the 30th day of December, 1908, a Certificate of the Trial Judge was filed. Said Certificate is in words and figures as follows, to-wit:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
vs.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

228 No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Certificate.

Heretofore this court by order made on the 5th day of March, 1906, referred each and all of the foregoing eighteen cases
229 to F. L. Schofield, a Special Master, to take the evidence and report the same to this court with certain findings, as will appear from the order now of record.

Later on the said Schofield proceeded with said hearing and took certain evidence, much of it being oral testimony taken down by stenographers and duly transcribed, and other evidence being in the form of exhibits.

Later on this court by agreement of parties, to-wit, on the 13th day of June, 1908, made an order that the said cases should come on for trial October 5th, 1908, to the Court on the evidence thus taken by the said Special Master, Mr. Schofield, together with such other and further evidence as might be submitted by the respective parties.

October 5th, 1908, the hearing of said cases was upon the application of the defendants continued until the 9th day of November, 1908, at which time the hearing of said cases was proceeded with and continued *with* until and including November 14th, 1908, at which time there was an adjournment of the hearing until December 14th,

1908, when the hearing was again resumed and proceeded with until the 30th day of December, 1908, when said hearing was concluded, and each, all and every of the parties rested.

The said cases were heard and are to be determined only upon the evidence received by the court, consisting in part of the evidence taken before the Special master, Mr. Schofield, and in part received by the court in open court, and there was no other or further evidence received by the court or offered by any party other than that hereinafter scheduled. And in the event of an appeal of any or all of the cases, the clerk will certify to said evidence, subject, however, to such rights as the parties may have under the laws and rules of the Appellate Court to designate what shall be certified up and what omitted.

The evidence so taken by the Special Master, returned and
230 filed in open court and offered in evidence as hereinbefore stated, is as follows:

Five volumes designated as in case No. 2998, marked Volumes I to V, both inclusive, and one volume designated, "2998, Chicago, Burlington & Quincy; Index and Exhibits." Also annual statements of the Chicago, Burlington & Quincy Railroad Company to the Railroad Commissioners for the years ending, respectively, June 30th, 1904, June 30th, 1905, June 30th, 1906 (three copies).

Also four volumes returned designated as "2995: Missouri Pacific," marked respectively, Volumes I to IV, inclusive, together with one volume marked "2995, Missouri Pacific Railway: Index and Exhibits." Also the tax return of the Missouri Pacific for June 1st, 1904, June 1st, 1905, the 26th Annual Report of the Missouri Pacific Railway, Exhibit- 34, 36-*b*, and 24, in case No. 2995. Also seven analytical sheets of the Missouri Pacific Railway upon form # 1939, and seven analytical sheets of the Missouri Pacific Railway upon form # 1941, and two analytical sheets of the Missouri Pacific Railway upon form # 1940, in case No. 2995.

Also four volumes of testimony marked I to IV inclusive, in case No. 3000, Wabash Railroad. Also one volume endorsed, "3000 Wabash Railroad: Index and Exhibits." Also exhibits marked in case No. 3000 and being designated "Exhibit 15," being the 15th and 17th Annual Report- of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904 and June 30th, 1906, respectively. Also the 15th and 16th Annual Report- of the Directors of the Wabash Railroad Company for the years ending June 30th, 1904 and June 30th, 1905, respectively, each marked "Exhibit 16." Also the 16th and 17th Annual Reports of the Directors of the Wabash Railroad Company for the years ending respectively June 30th, 1905 and June 30th, 1906, each marked "Exhibit 17."

Also one volume returned by the Special Master marked "2989, Atchison, Topeka & Santa Fe Proceedings," as showing certain proceedings had before him the said Special Master.

231 All the evidence offered before the said Special Master and returned into court and used in these cases and all the proceedings had therein, are included in the papers thus specifically enumerated, each volume and document hereinbefore referred to

being now identified by the endorsement thereon of the Trial Judge, "Smith McPherson, Judge."

And pursuant to the order of the court and by agreement of parties, the said cases came on for trial to the Court, November 9th, 1908, and said trial was continued from time to time with certain adjournments until December 30th, 1908, when the trial of all the cases was concluded and the said cases by the Court taken under advisement. The evidence taken before the court in open court is contained in volumes identified as follows:

Volume I, marked filed by the clerk, December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume II, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume III, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume IV, marked filed by the Clerk December 30th 1908, and further identified by the signature of Smith McPherson, Trial Judge. Volume V, marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, said volume V being made up of Exhibits, which together with the exhibits hereinafter scheduled, each and all being marked filed by the Clerk December 30th, 1908, and further identified by the signature of Smith McPherson, Trial Judge, are all the exhibits offered in open court in the trial of said cases; the exhibits other than those in Volume V being as follows: Exhibits A, B, C, D, E, G, H, I, and Exhibits No. 54, 59, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 4, and Exhibit "Douglas I."

And said cases hereinbefore entitled were heard and fully
232 submitted to the Court, on the evidence and the exhibits hereinbefore scheduled, and on no other evidence than that hereinbefore scheduled. And each, all, and every of the parties before final submission after the introduction of the foregoing, by counsel in open court said no further evidence was desired or would be offered in the cases.

This certificate is now signed and ordered filed as of this date after the submission of the cases and all of them.

Done in open court this December 30th, 1908.

(Signed) SMITH McPHERSON, *Judge.*

233 Afterwards, to-wit, on the 30th day of December 1908, the following order was filed and entered of record:

UNITED STATES OF AMERICA, *sct:*

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

2993. In Equity.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
vs.
JOHN A. KNOTT et al.

Also

In Equity.

RAILROAD COMPANIES
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri et al., Being Bases Numbered 2988, 2989, 2990, 2991, 2992, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Now on this day again come the parties by their solicitors. Thereupon the hearing of evidence is concluded, whereupon both parties rest, and this case is fully submitted, and is by the Court taken under advisement, and the orders and decree herein will be rendered and entered of record as of this date.

(Signed) SMITH McPHERSON, *Judge.*

December 30, 1908.

234 Afterwards, to-wit, on the 21st day of January, 1909, the following order was filed and entered of record, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Others.

No. 2989.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2990.

THE ST. LOUIS SOUTH WESTERN RAILWAY COMPANY
vs.
JOSEPH P. RICE and Others.

No. 2991.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

No. 2992.

THE ST. LOUIS, KANSAS CITY & COLORADO RAILROAD CO.
VS.
JOHN A. KNOTT and Others.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2994.

THE ST. LOUIS & HANNIBAL RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2995.

THE MISSOURI PACIFIC RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2996.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY CO.
VS.
JOHN A. KNOTT and Others.

No. 2997.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

235 No. 2998.

CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 2999.

QUINCY, OMAHA & KANSAS CITY RAILWAY COMPANY
VS.
JOHN A. KNOTT and Others.

No. 3000.

THE WABASH RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3001.

THE ST. JOSEPH & GRAND ISLAND RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3002.

KANSAS CITY, CLINTON & SPRINGFIELD RAILWAY CO.
vs.
JOHN A. KNOTT and Others.

No. 3003.

CHICAGO GREAT WESTERN RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3004.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

No. 3006.

THE CHICAGO & ALTON RAILWAY COMPANY
vs.
JOHN A. KNOTT and Others.

Order.

Each of the foregoing causes came on for hearing this January 20, 1909, the parties appeared by counsel, and admitted that the term of office of Herbert S. Hadley as Attorney General had expired, and Elliott W. Major was the duly qualified and acting successor and Attorney General of Missouri. He appeared in person, and by the consent of himself and all counsel in the cases, it is ordered that without any formal pleadings, Elliott W. Major as Attorney General of Missouri be and he is hereby substituted for and in the
236 stead of Herbert S. Hadley, so that all pleadings against and on behalf of said Hadley shall apply to the substituted party as fully as if made against and for him.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 20th day of February, 1909, the following order was filed and entered of record, to-wit:—

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al., and Equity Cases No. 2989, 2991, 2993, 2994, 2997, 2998, 3002, 3003.

Order.

Whereas, after the cases above numbered had been submitted and argued by agreement of all parties at the request of the Court, James Peabody and F. P. Johnson, expert accountants for the railroad companies, and A. P. Taliaferro and T. A. Hamilton, expert accountants for the defendants, compiled statements showing the earnings, operating expenses, etc., for each of said railroad companies, for periods of time as therein stated, and affixed a certificate to the effect that said statement in each case correctly shows the results of the various assumptions set forth therein, which said certificate was signed by all four of said expert accountants.

It is therefore ordered that each of said statements be filed and made of record herein.

Done in open court this February 20th, 1909.

(Signed) SMITH McPHERSON, *Judge.*

237 No. 2993. Kansas City Southern Railway Company.

Earnings, Operating Expenses, etc., on State Business, Missouri.

(For 6 Months Ending June 30, 1908.)

Railroad's Basis.

	Freight.	Passenger.	Total.
1. Earnings (not including miscellaneous)	$38,748.76	$31,865.28	$70,614.04
2. Operating expenses....	25,022.83	27,932.93	52,955.76
3. Net Operating Revenue.	$13,725.93	$3,932.35	$17,658.28

	Freight.	Passenger.	Total.
4. Taxes and Rentals (Revenue)	$978.13	$738.13	$1,716.26
5. Diminution in Revenue under Law of 1907....	2,957.58	.....	2,957.58
Total.....	$3,935.71	$738.13	$4,673.84
6. Net operating Revenue, less Taxes, Rentals, and Diminution in Revenue	$9,790.22	$3,194.22	$12,984.44
7. Bond interest	$5,295.38	$4,365.11	$9,660.49
8. Result on flat Revenue basis after deducting bond interest.....	$4,494.84	*$1,170.89	$3,323.95
9. Six per cent interest on three times assessed value in 1908 (Revenue basis) is.....	$8,923.38	$7,355.76	$16,279.14
10. Result on flat Revenue Basis after deducting six per cent on three times assessed value of property	$866.84	*$4,161.54	*$3,294.70
11. Result on flat Revenue basis after deducting bond interest (line 8).	$4,494.84	*$1,170.89	$3,323.95

238 No. 2993. K. City Southern—R. R. Basis, page 2.

12. Extra cost based on 50% more for freight, in proportion to revenue, and 15% more for passenger in proportion to revenue, than on all other business	$11,711.60	$3,267.09	$14,978.69
13. Result of applying basis shown in line 12 to figures in line 11.....	*$7,216.76	*$4,437.98	*$11,654.74

[* In red ink in copy.]

	Freight.	Passenger.	Total.
14. Extra cost on basis of twice as much for freight in proportion to revenue, and 25% more on passenger in proportion to revenue, as compared with all other business	$22,909.03	$5,346.15	$28,255.18
15. Result of applying basis shown in line 14 to figures in line 11....	*$18,414.19	*$6,517.04	*$24,931.23
16. Extra cost on basis of three times as much for freight in proportion to revenue and 35% more for passenger in proportion to revenue, as compared with all other business	$43,989.91	$7,340.35	$51,330.26
17. Result of applying basis shown in line 16 to figures in line 11.....	*$39,495.07	*$8,511.24	*$48,006.31
18. Extra cost based on 50% more on passenger in proportion to revenue than on other passenger business	.....	$10,211.43	.....
19. Result of applying basis shown in line 18 to figures in line 11.....	.....	*$11,382.32	.....
20. Result on flat revenue basis after deducting 6% on 3 times assessed value of property (line 10)	$866.84	*$4,161.54	*$3,294.70

239 No. 2993. K. City Southern—R. R. Basis, page 3.

21. Extra cost based on 50% more for freight, in proportion to revenue and 15% more on passenger, in proportion to revenue, than on all other business	$11,711.60	$3,267.09	$14,976.69

	Freight.	Passenger.	Total.
22. Result of applying basis shown in line 21 to figures in line 20.....	*$10,844.76	*$7,428.63	*$18,273.39
23. Extra cost on basis of twice as much for freight in proportion to revenue and 25% more for passenger in proportion to revenue as compared with all other business	$22,909.03	$5,346.15	$28,255.18
24. Result of applying basis shown in line 23 to figures in line 20....	*$22,042.19	*$9,507.69	*$31,549.88
25. Extra cost on basis of 3 times as much for freight in proportion to revenue, and 35% more on passenger in proportion to revenue, as compared with all other business	$43,989.91	$7,340.35	$51,330.26
26. Result of applying basis shown in line 25 to figures in line 20.....	*$43,123.07	*$11,501.89	*$54,624.96
27. Extra cost based on 50% more on passenger, in proportion to revenue, than on other passenger business	.....	$10,211.43	.....
28. Result of applying basis shown in line 27 to figures in line 20.....	.....	*$14,372.97	.....

[* In red ink in copy.]

240 No. 2995. K. C. Southern—State's Basis, page 4.

State's Basis.

	Freight.	Passenger.	Total.
1. Freight and Passenger Revenue	$38,748.76	$31,865.28	$70,614.04
Miscellaneous Earnings.	7,533.64	10,493.05	18,026.69
Total earnings.	$46,282.40	$42,358.33	$88,640.73
2. Operating Expenses (ton-mile and passenger-mile proportion)	$6,398.53	$35,471.28	$41,869.81
3. Net Operating revenue.	$39,883.87	$6,887.05	$46,770.92
4. Taxes and Rentals (ton-mile and passenger-mile proportion)	$250.11	$937.32	$1,187.43
5. Diminution in Revenue under Law of 1907	2,957.58	.....	2,957.58
Total	$3,207.69	$937.32	$4,145.01
6. Net operating Revenue, less Taxes, Rentals and Diminution in Revenue	$36,676.18	$5,949.73	$42,625.91
7. Proportion on Earnings basis of three times assessed value of property in 1908	$177,663.76	$162,791.46	$340,455.22
8. Figures in line 6 are as to figures in line 7	20.64%	3.65%	12.52%
9. Result on flat ton-mile and passenger mile basis after deducting Taxes, Rentals, etc. (line 6)	$36,676.18	$5,949.73	$42,625.91
10. Extra cost based on 30% more for freight, per ton-mile and reduced cost based on 10% less for passenger per passenger mile than for interstate	$1,885.28	$2,729.64	*$844.36

[*Do not add in cost.]

	Freight.	Passenger.	Total.
11. Results of applying basis shown in line 10 to figures in line 9.....	$34,790.90	$8,679.37	$43,470.27

241 No. 2993. K. C. Southern—State's Basis, page 5.

12. Figures in line 11 are as to figures in line 7....	19.58%	5.33%	12.77%
13. Extra cost based on 50% more for freight, per ton-mile and reduced cost based on 20% less for passenger, per passenger-mile, than for interstate	$3,142.14	$5,600.73	*$2,458.59
14. Result of applying basis shown in line 13 to figures in line 9.....	$33,534.04	$11,550.46	$45,084.50
15. Figures in line 14 are as to figures in line 7....	18.87%	7.09%	13.24%

The attached statement of earnings, operating expenses, etc., of the Kansas City Southern Railway Company, for the six months ending June 30th, 1908, correctly shows the results on the various assumptions set forth therein.

For the Railroads,

JAS. PEABODY.
F. P. JOHNSON.

For the State,

A. P. TALIAFERRO.
T. A. HAMILTON.

242 Afterwards, to-wit, on the 6th day of March, 1909, the following order was filed and entered of record, to-wit:

[* In red ink in copy.]

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY, et al., and also Numbers 2989 to 3004, Inclusive, and 3006.

Order.

By consent of parties, in accordance with agreements heretofore made and not recorded, it is on this March 6th, 1909, ordered:

1. The answers heretofore filed by the Attorney General and Railroad Commissioners, to which replications were filed, shall be treated and adopted by the other defendants who heretofore demurred herein, as their answers duly replied unto.

2. All the evidence taken before the Special Master and in open court, regardless of the particular case in which it was offered, shall be regarded as having been taken and offered in each of the cases tried.

(Signed) SMITH McPHERSON, *Judge.*

We consent to the above order.
FRANK HAGERMAN,
Solicitor for Complainant.
E. W. MAJOR, *Att'y General;*
SANFORD B. LADD,
JOHN KENNISH,
F. W. LEHMANN,
Solicitors for Appearing and Answering Defendants.

243 Afterwards, to-wit, on the 8th day of March, 1909, a findings of fact was filed. Said findings of fact are in words and figures as follows, to-wit:

In the Circuit Court of the United States, Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al. and Equity Cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Findings of Fact.

Prior to the argument the Court requested counsel on both sides to submit requests for findings of fact. Complainants' counsel did

this. Defendants' counsel have not done so. Complainants' requests have been considered, some of which are embodied within the following findings, and some are not.

The following are the findings of fact that the Court makes as based upon the evidence herein:

1. The complainants are the eighteen railroad companies owning and operating lines of railroad in Missouri, they doing all of the state and interstate railroad business therein, and all of them except the St. Louis & Hannibal Company having lines of railroad both within and without the state. That company is wholly within the state, extending from Hannibal, Missouri, to the south 120.61 miles. The Kansas City, Clinton & Springfield Company is a road of about 160 miles in length with 151.01 miles in the state. All the other companies have lines extending into a number of other states, one of them extending into thirteen other states and territories. These roads with their own lines and with their connecting carriers, carry all the traffic and do all the business, freight and passenger, within the state, whether of state or interstate character. The intra-state business is at all times herein referred to as state business. That part of the interstate business which neither originates within, nor has its destination within, but passes across the State of Missouri, is called trans-state business.

2. The same roadbed, locomotives, cars and trains including all facilities, are used for both classes of business, state and interstate. It is not practicable to conduct the business in any other way. This is so both from the standpoint of the public and that of the
244 companies. If state business were to be carried alone upon some cars and trains, and interstate alone upon others, the expenses would be enormously increased and almost if not quite prohibitive while the public would be subjected to delays, inconveniences, and great expense. By reason of all this the business cannot practically be separated.

3. Both from a geographical and railway standpoint Missouri is situated differently from the other states of the Union there only being two or three other states that have a resemblance to it in these particulars, and each of them in a lesser degree. This is so because the Mississippi is its boundary on the east all the distance. From a railroad standpoint the Missouri River is its boundary line on the west, although physically the Missouri River is only the western boundary line from the northwest corner of the state about
245 half way to the southwest corner. But at the half way point, namely, Kansas City, the river turns directly to the east, and continues its way to the Mississippi River. In its production, business and commerce all that part of Missouri to the north of the Missouri River is practically like the south half of Iowa, the country districts producing large quantities of live stock and grain for the market, as well as much bituminous coal. The south half of Missouri is entirely different. The amount of grain and live stock is much less than in the north half of the state. But the south half has a large amount of timber, stone, lime, lead, zinc, iron, and fruits. St. Louis on the east is a city of nearly a million people, Kansas City on

the west nearly half as many, while St. Joseph has more than one hundred and twenty-five thousand people. These three cities carry on large manufacturing interests. The grain, live stock, and packing house interests at Kansas City and St. Joseph are enormous. For a third of a century or more for reasons which need not be repeated, rates from the East were fixed to the Mississippi River, and later on, from thence to the Missouri River. The interstate rates either in or out were the one plus the other. It was the same from the West. It was likewise the same for the trans-state business going in either direction. Such is the method existing today. This brought about the fact which for years has existed and exists today, that the short line of road between the two rivers fixes the freight rates. To illustrate, the Burlington road is the short line between the rivers, being 198 miles from Hannibal to St. Joseph, and the same distance, within a few miles, to Kansas City. The roads between Kansas City and St. Louis and there are four at least of them, including the Burlington, is an average distance of nearly 300 miles, but some of the roads being fifty miles or more farther between the points than the others. This brings about the fact that all freight rates between any one point on the one river and any point on the other river are the same as the rate from Hannibal to St. Joseph over the Burlington line. That is to say, the freight rates on any road regardless of distance are the same between St. Louis and either Kansas City or St. Joseph that they are between Hannibal and St. Joseph over the Burlington line. This has given the three cities of St. Louis, Kansas City and St. Joseph great advantages over other points. Competent persons say that to change this system will work irreparable harm to the three cities named, as well as to all other places within the state, by driving both the jobbing and manufacturing business to seaboard points. As to this no finding is made nor opinion expressed because it is
246 believed to be a matter of policy upon which this court in these cases should express no opinion. As to the passenger rates, by reason of competition the fare is the same between Kansas City and St. Louis, the shorter line fixing the rates, thereby compelling the longer road to be at much expense without remuneration. This is likewise true as to all competitive points.

As to the foregoing question of rates and fares, there is no United States Statute governing the same, and there is no Missouri statute upon the subject except the two statutes questioned by the bills, one dealing with certain commodities per car per distance, and the other fixing the passenger fares at two cents. Aside from these two statutes, and as to any bearing they have as to charges between the two rivers, the conditions named have been brought about and exist today by reason of a long time custom and by reason of transportation, actual and probable, upon the two rivers.

Still further bearing on the question are the following facts: Joplin is a city in the southwestern part of the state of more than twenty-five thousand people. There are a number of towns adjacent thereto, giving that county (Jasper) a population of 200,000 people. It is a very large mining district of lead and zinc. Between Kansas City and Joplin three of complainants herein have railroads. The Mis-

souri Pacific at all points between the said places is within the state. Each of the other two between said points is partly without the state, starting within and going out and coming back, thereby making it interstate business as to two of the roads between Kansas City and the Joplin district. Between Kansas City and St. Joseph, four roads do the business. The Missouri Pacific and Chicago Great Western is each part of the distance within the state of Kansas, while the Burlington and St. Joseph and Grand Island Company is each wholly within the State of Missouri between the two cities. Between St. Joseph and St. Louis two of complainants do practically all the business, which is very large in both passenger and freight. These are the Burlington and Missouri Pacific. Between said cities the Burlington line is wholly within the state. But the Missouri Pacific line is partly within the state of Kansas, crossing the Missouri River at Atchison and coming back into the state at Kansas City. On the foregoing facts the finding is that the short line between two competitive points necessarily fixes the rate, and the Missouri Statutory rates under the statutes in question fix the rates between the cities named. But this is so solely, because of the geographical location of cities and railroads, and competition,
247 and long time custom. It is not so either because of a statute or any judicial determination by any of the Courts of Missouri.

4. Pending this l-tit*g*ation, each of the complainant companies made and delivered to defendants statements showing the earnings and expenses for certain periods, which statements have been taken by both sides as sufficiently illustrative of the situation for the determination of these cases. The companies extended to the state officers, defendants herein, acting by experts by them selected, the opportunity to examine the statements and the books, papers, vouchers, and records of the companies. The freight rate statute of 1907 as to commodities mentioned allowed greater rates than did the statute of 1905 assailed by the original bills of complainant herein, and it was conceded at the trial that if the rates fixed by the Act of 1907 were confiscatory, that those fixed by the Act of 1905 were likewise.

5. The parties were producing evidence and preparing their evidence for about one year with the aid of experts on each side. These experts were all men of high character and great proficiency as railroad accountants. The experts on each side were given the fullest opportunity and all the time desired to obtain the information and put the same in form in exhibits, schedules and reports, all of which are in evidence in the cases, supplemented by the oral testimony of each of the experts with reference to all of these things.

6. It was conceded by the experts that the companies fairly accurately and honestly kept their books showing the facts in these findings set forth. The experts of the state and of the companies have thereby been enabled to present with certainty and precision all the earnings within the state, both state and interstate business. But obtaining and compiling this information by the experts has been at great expense of time and money. One exception to the

foregoing is to be noted as to passenger fares for a short period of time after the two cent fare law became operative. By agreement of both sides in open court in June, 1907, this Court issued a temporary writ of injunction against the enforcement of the freight rate statute. The complainants asked for a temporary injunction against the enforcement of the two cent passenger fare statute. This Court held that the statute should be given a trial for five months and ascertain the result by actual operation. In preparing the order counsel, no doubt by inadvertence, fixed three months as the period for trial as to results. But by acquiescence of both sides, or
248 if not, by delays with which the Court was not chargeable, such status remained for more than one year, and the cases were not actually brought on for trial until in November, 1908. But after the statute became operative in June, 1907, and this Court denied the temporary writ of injunction, the interstate passenger rates remained as they were for a period of about two months. During the time that condition prevailed parties both coming into and going out of Missouri on interstate journeys would buy tickets to the state line, thereby obtaining the benefit of the two cent fare for all distance within the state. It was not possible for the companies to show the truth as to the number of such trips, and therefore it is not possible for the Court to find just how much of the earnings were on account of such interstate trips. But the extent, whatever it was, would make an erroneous showing as to state earnings, though favorable to defendants, because such earnings were of an interstate character. But even though for the short time a part of the business was thus carried on so that additional earnings were erroneously placed to the credit of the state, still the results are not changed, for the error was against, and not in favor of, complainants.

Freight earnings, both state and interstate, are made up from earnings of transportation of another item called "Miscellaneous freight", composed of switching, demurrage, and storage charges, and track and equipment rentals. Passengers earnings are made up of passengers fares and miscellaneous, the latter covering mail, express, excess baggage, storage, rentals, and possibly some other terminal earnings.

No difference of consequence has arisen between the parties as to the expense of doing the entire business in the state. With reasonable certainty the expenses for doing the freight and passenger, including miscellaneous of each, can be and have been separated.

The earnings are known and fixed and in these findings stated to a certainty. But as to the expenses as between state and interstate business, there has been a controversy and such is the principal controversy in the cases. There is no known fixed or certain rule for determining how this separation of expenses shall be made. The same cannot be made with mathematical certainty. Complainants claim that the division should be made upon the revenue basis; defendants claim that it should be made upon the ton-mile basis for freight, and passenger mile basis for passengers classifying the miscellaneous earnings as and with freight and passenger earn-

249 ings respectively. By the revenue basis is meant to assign such proportion of the total expense in the state on that class of business as the earnings of that class of state business bears to all the earnings state and interstate from the same class, or, which is the same thing, ascertain what the percentage of all expenses is of all earnings, then multiply that by the state earnings of any class, and thus obtain the sum to be assigned as state expense. The ton mile basis as to freight means the assignment as state freight expenses of any class of business such proportion of all state expense as the number of ton miles of state freight bears to the total ton miles of all freight hauled within the State. By the passenger mile basis is meant the assignment as state passenger expenses such proportion of all passenger expenses as the number of passengers in state business carried one mile bears to the whole number of passengers state and interstate carried one mile.

For reasons stated in an opinion herein filed, the revenue basis has been and is adopted as the only logical basis to use in arriving at a correct conclusion. The one basis or the other as a whole must be adopted. Either side can make a better showing by adopting the one basis in part of the accounting, and the other basis for the other. Neither should be and is allowed to do this. As will presently appear, the state has attempted to do this in making its passenger earnings accountings.

7. Each basis for accounting has some defects, but they are minor and not controlling and do not change the result if the revenue basis is taken.

The expense of doing the state business over interstate is greater for carrying freight by at least fifty per cent., and at least twenty-five per cent for carrying passengers. Therefore this extra cost must be added to the expenses after they have been ascertained so as to obtain the total expense. If the ton mile basis of division were adopted, the extra cost should also be added. This would require the use of another multiplier sufficient to bring the sum total of the state freight expense equal to that found herein, to actually represent the cost as shown by the evidence. Any apportionment of passenger expense upon the passenger mile basis would be unfair and unjust, although much more favorable to the companies than if made upon the revenue basis.

8. All things considered, the evidence shows the cost of doing the different classes of state business as between state and interstate apportioned upon the revenue basis with added extra cost
250 brings a result in these findings stated, which is fair and representative and just. The Court finds, aside from the revenue basis, that the evidence shows the amount ascertained in each case as the expense and extra cost, is fair and justly represents the expense of doing each class of state business. The extra cost as to each complainant for doing the state business over interstate is more than fifty per cent in case of freight, and more than twenty-five per cent in case of passenger. This extra expense as thus found is considerably in excess of these figures and the figures used are adopted as the minimum. The sum total of this extra cost if

ascertained according to the ton mile theory, would not be changed because it is a question of multiplication, and one multiplier or another must be used accordingly as the theory is adopted. The findings herein made on all the evidence represent in dollars the fair cost and expense fixed at a minimum. There has also been considered and found in each case such as would equal the diminution of earnings upon the commodities covered by the freight rate statutes of 1905 and 1907 if the rates thus fixed had been charged, as there would have been but for the temporary injunctions herein issued.

9. The evidence shows that each of complainants has regularly paid for many years, interest on its bonds. There is no evidence to show that any of the railroad property within the State of Missouri has an undue amount of bonds or is unfairly bonded, and the evidence does not show that any of the bonds provide for interest in any sum greater than such bonds should carry. It does show that most of the bonds are at the lowest rates of interest, and much less than the legal rate allowable in Missouri. In thus referring to interest, the St. Louis & Hannibal, and Kansas City, Clinton & Springfield companies are excepted.

10. After the adoption of the two cent fare statute, there was no substantial increase in travel. For a few weeks there was a small increase largely brought about by interstate passengers buying tickets to state lines, and in part by the novelty. What if any increase of travel occurred by reason of said two cent fare, would be a mere approximation. It has not been substantial, and there is no reason to believe that any such increase will be brought about in the future by a two cent fare.

11. The values of the railroad properties in the State of Missouri are found, in the cases tried, to be as follows:

	Miles.	Value.	Value per mile.
St. Louis & San Francisco..	1688.89	$61,238,414.70	$36,259.00
Atchison, Topeka & Santa Fe	348.31	15,091,212.00	43,326.00
251 Chicago, Rock Island & Pacific.....	515.48	19,102,507.59	37,058.00
Kansas City Southern.....	174.48	8,039,084.40	46,075.00
St. Louis & Hannibal.....	120.61	1,143,077.02	9,477.00
Missouri, Kansas & Texas..	506.21	20,894,299.93	41,276.00
Chicago, Burlington & Quincy.....	1136.34	53,172,907.83	46,793.00
Kan. City, Clinton & Springf'd	151.01	2,380,222.48	15,762.00
Chicago Great Western....	84.43	3,605,236.38	42,701.00

With the exceptions hereinafter stated, the above valuations of the properties of said nine companies as fixed, are in fact practically the same as those fixed by the state assessing board for the purpose of taxation. But aside and apart from the valuations thus fixed by the state board, these findings are that upon the whole evidence said properties are at least of the values above fixed. The evidence shows that included in such sums the state board after making cer-

tain valuations under the heading of "all other property" fixed certain valuations, which when added give the totals as above. In argument it was contended that "all other property" included franchise values. This is not deemed important because it is difficult to see wherein steam railroad property like those involved, can have a franchise value. But waiving that, any franchise value that the state board could have considered, was necessarily so small a per cent of the total valuations fixed by the state board as to make no appreciable difference in the result of these cases, because if altogether admitted the remaining value is such that no road could obtain a return to which it is herein found to be entitled. But if the property has a franchise value for taxation, it also has such valuations as an earning power or, rather, upon which returns should be made. In fixing the valuations above set forth there have been considered the immense terminal values of most of the roads, the amount of stock and bonds outstanding, what it would cost to duplicate the properties both with and without terminals in the large cities, and all the evidence bearing on present values, and in fixing said valuations the sums found are the minimum valuations, the properties being worth at least the sums thus fixed.

The foregoing valuations are the same as fixed by the state assessing board except as to the property of the St. Louis & Hannibal and of the Kansas City, Clinton & Springfield in the state, which are found to be worth sixty-six and two-thirds per cent of the valuations of the state boards.

252 12. The interest obligations except as already stated are just and reasonable and should be paid in full with some dividends to the stockholders in addition. However, and entirely aside from the question of interest, the rates and earnings should in any event be such as to produce a fair return upon the valuations hereinbefore fixed.

And such earnings should be on the property within the state as would be equivalent to six per centum per annum, that per cent being a fair return upon such valuations.

13. About the same time the two cent fare statute became operative, passes and other forms of reduced and free transportation, were abolished. Since that time they have not been given nor used except in cases of employés actually employed. The passenger earnings were thereby increased, but such increase was not more than approximately one per cent.

14. After the arguments were concluded at the request of the Court, and with the consent of the parties, two experts upon each side, two selected by the railways and two by the defendants, worked with the Court for something more than one week. These experts were the same gentlemen representing their respective sides who had done much of the work in preparing the cases for the respective sides for hearing. The court requested these experts to take the numerous tables and tabulate them already in evidence and to confine themselves wholly to that which had been introduced in evidence in the cases, and to make therefrom a new table for each of the nine cases showing the earnings and the expenses chargeable

to each class of earnings according to the respective theories covered by counsel in the arguments. The Court further requested said four experts after preparing said new tables that if they agreed, to affix their signatures thereto. This they did below a certificate reciting that the statement of earnings, operating expenses, etc., as to each particular road for the time therein given, correctly shows the results on the various assumptions set forth therein. Said nine statements were by order of this Court, February 20, 1909, ordered filed and made of record in the cases. The said nine statements are now and here referred to, and are made part hereof. Each of said nine statements is found by the Court to be correct upon the respective theories presented. But the theory entitled as the "state's basis" is rejected for the reason that said statement improperly divides miscellaneous earnings, placing an undue proportion to the benefit of the state. And said basis improperly makes a division of expense upon the ton mile and passenger mile basis and does not allow a sufficient amount as extra cost of doing state
253 business, and the same does not allow enough for the value of the property in that it deducts all sums included "all other property" multiplied by three.

If the companies had been permitted to charge the amounts per passenger per mile which they did charge and receive prior to the two cent passenger fare statute, they would have received in addition to that which they did receive by reason of the statute and by reason of the temporary injunction being denied for earnings within the state for a period of twelve months last proceeding the submission of the cases, the following sums; (Interstate, however, not controlled by statute, but by changed conditions.)

Name of road.	State passengers.	Interstate passengers.
A. T. & S. F. R. R.	30,885.52	66,271.03
C. R. I. & P. Ry. and St. L. K. C. & C. Ry	124,469.14	111,178.60
K. C. So. Ry.	7,044.49	27,260.75
St. L. & H. Ry.	37,275.38	145.23
M. K. & T. Ry.	140,593.46	63,815.12
K. C. C. & S. Ry.	14,654.57	10,846.91
C. B. & Q. R. R.	394,878.77	261,556.41
C. G. W. Ry.	49,459.47	34,621.62

In the case of the St. Louis & San Francisco there were included in expenses sums paid as rentals under a lease given by the Kansas City Fort Scott & Memphis Railway Company whose common stock is owned by it which operates the company under a lease requiring it to pay to the holders of preferred stock of the Fort Scott & Memphis Company, as a rental, a sum equal to four per cent annual dividends. This lease has been in force several years and is a fair one, and such rental has been treated as an operating expense, and is not included in fixed charges. And the Court finds that it is an operating expense. But even if it were a fixed charges, it is not material as the result would not be changed even though the rentals

were carried into the fixed charge account. This is so because the amounts carried into state freight expense is only $8,428.56 and interstate passenger expense, $7,443.68.

15. In the statements hereinbefore referred to made and signed by the four experts, while they correctly set forth the figures on both the revenue theory and the ton and passenger mile theory the placing of the miscellaneous earnings of the passenger business is arbitrarily fixed and does not at all proceed upon the passen-
254 ger mile basis, but for that the revenue basis is taken and fixed. Such earnings are arbitrarily divided without reference to the facts, the result being the state earnings and especially passenger, are fixed much higher than the actual earnings. Said division instead of following defendants' theory of the ton mile and passenger mile basis, is upon the revenue basis from which it is seen that this would be a splitting of theories. But from this and from all the evidence it is plain that even the ton and passenger mile basis theory cannot be worked out without showing a loss, to prevent which an arbitrary change of account must be made as to the miscellaneous business. Even in making this arbitrary change the revenue basis is used, and yet the revenue division of expenses insisted upon by complainants is said not to be recognized. This is utterly illogical and unfair, and does not represent the true facts as to whether such earnings are made at a loss, and there is no reliance whatever to be placed in such method of accounting. In so finding no reflection whatever is made upon the experts for the state, because as before found they are men of the highest character and learning and highly skilled in accounting and with a proper basis for such accounting their work is perfect. And from their own statements upon the basis adopted herein for making such accounting by the Court, the freight business for the period mentioned would have been done at a loss if the statutory rates had been observed, and the passenger business was done at a loss under the two cent fare statute.

16. As to each of the nine companies whose cases have been submitted, the earnings and expenses and all other items are different in amount. So with the returns upon value to which the company is entitled. But in no event in any of the cases tried would the freight earnings, after making the deductions herein found result in a return to any company of more than three per cent. With nearly every company an actual deficit is shown if the 1907 statute had been in force. So under the two cent fare statute a deficit as to nearly all of the companies, and not more than two per cent in case of any company. If the freight and passenger business should be combined with the miscellaneous of each class, there would be a deficit as to some and not to exceed three per cent as to any of the others. In arriving at these conclusions and in adopting the tabulations herein set forth an account has been taken of all earnings, state and interstate, freight and passenger,
255 and miscellaneous; the proportion of which state and interstate freight and passenger exclusive of miscellaneous bear to all state and interstate, miscellaneous included, and that

which they bear to all the earnings of the state; of miscellaneous freight and miscellaneous passenger earnings, undivided as between state and interstate, with the proportion they are of all earnings, freight and passenger; of all expenses divided as between all kinds of freight and passenger business, including miscellaneous, but not divided as between state and interstate; of the deductions to be made from all state freights not including miscellaneous of such proportion of expenses of all freight and passenger respectively as the freight and passenger earnings exclusive of miscellaneous bear to all earnings; of the deduction of the extra cost; of the diminution of freight earnings if the freight rate statute had been observed; of the value of that portion of the property assignable to the particular traffic. This value is found by taking for each class of business of the entire value of the property in the state, such proportion as the earnings on that portion of the business bear to all the earnings in the state. A statement so made as to each of the companies whose cases have been submitted is as follows:

17. The periods taken are representative taken by the experts upon both sides, and were for the months set forth in the column headed "time." These tables do not follow the form taken by the experts in preparing exhibits to be introduced in evidence, nor do they follow the prepared form adopted by the four experts in making the nine statements hereinbefore referred to. An attempt has been made to abbreviate, but with the results the same as adopted by the experts. These are found to be correct as now to be set forth, and are adopted by the Court. If any error has crept into them, the Court will make proper correction upon his attention being called thereto after these findings have been filed, which can be readily done upon motion or suggestion. The tables adopted by the Court now follow:

Interstate Freight.

	Company.	Time, mo.	Amount.	% of all freight.	% of all earnings.
	St. L. & S. F. R. R....	3	$2,214,002.82	76.94	54.68
	A. T. & S. F. R. R....	6	1,872,915.00	90.05	67.72
	C. R. I. & P. Ry.....	3	665,228.16	79.38	59.86
	K. C. So. Ry.....	6	702,249.91	79.35	67.11
	St. L. & H. Ry.....	12	51,735.05	36.25	34.61
	M. K. & T. Ry.....	6	1,333,455.26	81.73	57.89
	C. B. & Q. R. R.	12	6,454,699.87	78.75	52.40
256	K. C. C. & S. Ry	12	116,893.60	68.27	41.04
	C. G. W. Ry..	6	224,169.58	86.02	57.39

State Freight.

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R..	$577,192.84	20.04	14.26
A. T. & S. F. R. R.....	141,133.00	6.79	5.10
C. R. I. & P. Ry.....	150,953.68	18.02	13.58
K. C. So. Ry.....	87,748.76	4.38	3.70
St. L. & H. Ry.....	87,941.99	61.62	41.84
M. K. & T. R. R.....	277,416.52	17.01	12.04
C. B. & Q. R. R.....	1,580,529.64	19.28	12.83
K. C. C. & S. Ry.....	45,003.15	26.29	15.80
C. G. W. Ry.....	29,129.36	11.18	7.45

Miscellaneous Freight.

Company.	Amount.	% of all freight.	% of all earnings.
St. L. & S. F. R. R.....	$86,814.57	3.02	2.14
A. T. & S. F. R. R.....	65,833.56	3.16	2.38
C. R. I. & P. Ry.....	21,815.70	2.60	1.96
K. C. So. Ry.....	144,046.62	16.27	13.77
St. L. & H. Ry.....	3,044.11	2.13	1.45
M. K. & T. Ry.....	20,603.37	1.26	0.89
C. B. & Q. Ry.....	161,579.41	1.97	1.31
K. C. C. & S. Ry.....	9,319.58	5.44	3.27
C. G. W. Ry.....	7,280.24	2.80	1.86

Interstate Passenger.

Company.	Amount.	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.....	$368,687.43	31.49	9.11
A. T. & S. F. R. R.....	355,318.12	51.81	12.85
C. R. I. & P. Ry.....	113,524.21	41.53	10.22
K. C. So. Ry.....	89,504.58	55.47	8.55
St. L. & H. Ry.....	198.19	0.29	0.09
M. K. & T. R. R.....	303,214.54	45.12	13.16
C. B. & Q. Ry.....	1,777,788.27	43.15	14.43
K. C. C. & S. Ry.....	41,145.00	36.22	14.45
C. G. W. Ry.....	72,360.87	55.62	18.53

State Passenger.

Company.	Amount.	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.. 257	$599,051.59	51.17	14.79
A. T. & S. F. R. R.....	104,370.19	15.22	3.77
C. R. I. & P. Ry.....	114,853.04	42.02	10.33
K. C. So. Ry.....	31,865.28	19.75	3.05
St. L. & H. Ry.....	52,667.38	78.04	25.05
M. K. & T. R. R.....	246,368.53	36.66	10.70
C. B. & Q. R. R.....	1,611,702.92	39.11	13.09
K. C. C. & S. Ry.....	47,646.80	41.95	16.73
C. G. W. Ry.....	38,105.03	29.28	9.75

Miscellaneous Passenger.

Company.	Amount.	% of all passenger.	% of all earnings.
St. L. & S. F. R. R.	$203,077.28	17.34	5.02
A. T. & S. F. R. R.	226,080.00	32.97	8.18
C. R. I. & P. Ry.	44,980.06	16.45	4.05
K. C. So. Ry.	39,973.54	24.78	3.82
St. L. & H. Ry.	14,619.99	21.67	6.96
M. K. & T. Ry.	122,458.22	18.22	5.32
C. B. & Q. R. R.	731,021.89	17.74	5.94
K. C. C. & S. Ry.	24,797.39	21.83	8.71
C. G. W. Ry.	19,643.99	15.10	5.02

18. All freight and Passenger Expenses, including Miscellaneous, less taxes and rentals, and percentages to earnings, undivided as between State and Interstate.

Company.	Freight.	Passenger.	Taxes and rentals. Freight.	Taxes and rentals. Passenger.
St. L. & S. F. R.	1,902,813.26	974,816.61	112,452.04	38,979.63
A. T. & S. F.	1,382,738.65	572,167.20	32,361.50	10,854.04
C. R. I. & P.	619,190.73	317,633.62	74,227.43	21,015.44
K. C. So.	571,297.54	141,432.56	22,331.70	3,737.37
St. L. & H.	117,908.81	68,343.04	5,994.07	2,273.61
M. K. & T.	1,010,643.65	516,589.98	119,017.87	58,465.49
C. B. & Q.	6,793,610.60	3,527,311.81	12,235.30cr.	6,152.58cr.
K. C. C. & S.	98,988.29	138,384.77	9,182.36	5,749.38
C. G. W.	198,887.69	126,355.88	12,294.18	11,312.16

THIS PAGE BOUND VERTICAL IN BOOK

Company.	% of said expenses to earnings exclusive of taxes and rentals.		Same, including taxes and rentals.	
	Freight.	Passenger.	Freight.	Passenger.
St. L. & S. F. R. R...	62.64	83.26	3.91	3.33
A. T. & S. F. R. R....	66.48	83.43	1.55	1.58
C. R. I. & P. Ry.....	73.89	116.20	8.86	7.68
K. C. So. Ry.....	64.55	87.66	2.52	2.31
258				
St. L. & H. Ry.....	82.61	101.27	4.19	3.37
M. K. & T. Ry.....	61.95	76.87	7.29	8.69
C. B. & Q. Ry.....	82.88	85.60	0.00	0.00
K. C. C. & S. Ry.....	57.81	121.83	5.36	5.06
C. G. W. Ry.....	76.33	97.11	4.71	8.68

The time of the foregoing tables is the same as in first table above.

19. The following nine tables show the state earnings and expenses, valuation, return on value, and interest charge of the said nine roads respectively whose cases have been submitted. The other cases are to be covered by decrees by agreement the same as certain decrees of the nine cases, all of which is of record.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings.....	577,192.84		599,051.59	
State expenses.....	361,644.33		498,716.20	
Leaving.....	215,548.51		100,335.39	
Less taxes and rentals...	22,760.29		20,097.90	
Leaving.....	192,788.22		80,237.49	
Extra cost of doing state business, freight 50%, passenger 25%	131,425.08		53,907.36	
Leaving.....	61,363.14		26,330.13	
Diminution in earnings if the state rates in question had been charged.	11,389.27		.....	
Leaving.....	49,973.87		26,330.13	
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon, is.....	130,988.97	14.26%	135,857.42	14.79%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is	.....	2.29%	.....	1.16%
(*b*) Same without allowance for extra cost.	.....	8.2%	.....	3.5%

259

Interest charge:				
Actual interest charge paid on assignable properties	116,792.45		121,133.27	

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	141,133.00		104,370.19	
State expenses	92,581.89		87,834.09	
Leaving	48,551.11		16,536.10	
Less taxes and rentals...	3,503.41		901.74	
Leaving.....	45,047.70		15,634.36	
Extra cost of doing state business, freight 50%, passenger 25%	41,859.55		17,947.71	
Leaving.....	3,188.15		2,313.35	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	13,885.87		.....	
Leaving.....	10,697.72	(red ink) (deficit)	2,313.35	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	23,089.35	5.10%	17,068.16	3.77%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	8%	.....	5.49%
Interest charge:				
Actual interest charge paid on assignable properties	17,934.56		13,257.51	

260 THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

Period, Three Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	150,953.68		114,853.04	
State expenses	111,579.80		133,469.65	
Leaving.....	39,373.88		18,616.61	(red ink) (deficit)
Less taxes and rentals...	13,375.78		8,830.68	
Leaving.....	25,998.10		27,447.29	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	41,919.82		17,501.61	
Leaving.....	15,921.72	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	9,989.43		.....	
Leaving.....	25,911.15	(red ink) (deficit)	44,948.90	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period and 6% interest thereon	38,911.81	13.58%	29,599.34	10.33%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.47%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable properties	24,907.02		18,946.21	

261 THE KANSAS CITY SOUTHERN RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	38,748.76		31,865.28	
State expenses	25,022.83		27,932.93	
Leaving.....	13,725.93		3,932.35	
Less taxes and rentals...	978.13		738.13	
Leaving.....	12,747.80		3,194.22	
Extra cost of doing state business, freight 50%, passenger 25%	11,711.60		5,346.15	
Leaving.....	1,036.20		2,151.95	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,957.58		.....	
Leaving.....	1,921.38	(red ink) (deficit)	2,151.93	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,923.38	3.70%	7,355.76	3.05%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	6.58%	.....	2.6%
Interest charge:				
Actual interest charge paid on assignable properties	5,295.38		4,365.11	

262 THE ST. LOUIS & HANNIBAL RAILWAY COMPANY.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	87,941.99		52,667.38	
State expenses	72,655.40		53,334.91	
Leaving.....	15,286.59		667.53	(red ink) (deficit)
Less taxes and rentals...	3,693.55		1,774.32	
Leaving.....	11,593.04		2,441.85	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	12,026.69		2,444.68	
Leaving.....	433.65	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	15,126.02		.....	
Leaving.....	15,559.67	(red ink) (deficit)	4,886.53	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	28,694.05	41.84%	17,179.40	25.05%

State earnings and expenses.	Freight.		Passenger.	
Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	nothing	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	16,359.44		9,794.55	

263 MISSOURI, KANSAS & TEXAS RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	277,416.52		246,368.53	
State expenses	171,910.48		189,381.89	
Leaving.....	105,506.04		56,986.64	
Less taxes and rentals...	20,244.94		21,433.45	
Leaving.....	85,261.10		35,553.19	
Extra cost of doing state business, freight 50%, passenger 25%	66,096.09		27,482.59	
Leaving.....	19,165.01		8,070.60	
Diminution in earnings if the state rates in question had been charged.	20,222.85		.....	
Leaving.....	1,057.84	(red ink) (deficit)	8,070.60	
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	75,469.96	13.04%	67,070.48	10.70%

State earnings and expenses.	Freight.		Passenger.	
Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	0.72%
(*b*) Same without allowance for extra cost.	.....	5.18%	.....	3.18%
Interest charge:				
Actual interest charge paid on assignable property	62,439.68		55,490.41	

264 CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Period, Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	1,580,529.64		1,611,702.92	
State expenses	1,324,453.83		1,489,746.71	
Leaving.....	256,075.81		121,956.21	
Less taxes and rentals...	2,487.99	cr.	2,798.50	cr.
Leaving.....	258,563.80		124,754.71	
Extra cost of doing state business, freight 50%, passenger 25%	484,129.29		158,205.70	
Leaving.....	225,565.49	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	112,533.71		.....	
Leaving.....	338,099.20	(red ink) (deficit)	33,450.99	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	409,325.04	12.83%	417,620.02	13.09%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.11%	.....	1.79%
Interest charge:				
Actual interest charge paid on assignable property	132,735.02		135,424.89	

265 KANSAS CITY, CLINTON & SPRINGFIELD RAILROAD COMPANY.

For Period of Twelve Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	45,003.15		47,646.80	
State expenses	26,024.02		58,052.41	
Leaving.....	18,979.13		10,405.61	(red ink) (deficit)
Less taxes and rentals...	2,414.04		2,411.86	
Leaving.....	16,565.09		12,817.47	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	8,483.30		7,625.00	
Leaving.....	8,081.79		20,442.47	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	2,970.21		.....	
Leaving.....	5,111.58		20,442.47	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	22,564.51	15.80%	23,892.67	16.73%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	1.36%	.....	nothing
(*b*) Same without allowance for extra cost.	.....	3.61%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	23,881.78		25,288.48	

266 CHICAGO GREAT WESTERN RAILWAY COMPANY.

Period, Six Months.

State earnings and expenses.	Freight.		Passenger.	
State earnings	29,129.36		38,105.03	
State expenses	22,235.64		36,996.98	
Leaving.....	6,893.72		1,108.05	
Less taxes and rentals...	1,374.49		3,312.25	
Leaving.....	5,519.23		2,204.20	(red ink) (deficit)
Extra cost of doing state business, freight 50%, passenger 25%	9,347.72		6,090.35	
Leaving.....	3,828.49	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Diminution in earnings if the state rates in question had been charged.	1,893.41		.....	
Leaving.....	5,721.90	(red ink) (deficit)	8,294.55	(red ink) (deficit)
Valuation:				
Assignable proportion of value for representative period, and 6% interest thereon	8,057.70	7.45%	10,545.32	9.75%

Return on value:				
(*a*) Actual return upon the assignable value found in subdivision above, the amount shown in the first subdivision above is.....	.....	nothing	.....	nothing
(*b*) Same without allowance for extra cost.	.....	2.69%	.....	nothing
Interest charge:				
Actual interest charge paid on assignable property	7,164.08		9,375.81	

267 20. The Court believes that the foregoing findings are all that are material and all that are necessary to make. However, if any party believes that any material finding of fact has been omitted, upon application of such party the same will be considered and made if deemed advisable. And likewise if any of the foregoing computations or figures have been erroneously made. But such application to be entertained must be made within thirty days from this date.

And each, all and every of the foregoing are made as the findings of the Court, and are now and here in open court this March 8th, 1909, ordered filed and made of record in said cases and all of them.

(Signed) SMITH McPHERSON, *Judge.*

Afterwards, to-wit, on the 22nd day of March, 1909, the same being a day of the regular November term of said Court, the final decree was filed. Said decree is in words and figures as follows:—

268 In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2993. Equity.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, JOSEPH P. RICE, and FRANK A. WIGHTMAN, as Members of the Board of Railroad and Warehouse Commissioners of the State of Missouri; Herbert S. Hadley, Attorney General of the State of Missouri; Abernathy Furniture Company, The Kemper Grain Company, and George W. Witter; H. R. Oglesby, Railroad Commissioner of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George Dodd, County Judges, and Arthur C. Warner, County Treasurer; D. J. Dean and W. D. Corbin, and Elliott W. Major, Attorney General of the State of Missouri, Respondents.

Final Decree.

The above entitled case this March 8th, 1909, comes on for final decree upon the evidence and stipulations upon file and of record herein, the case having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the Court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the Trial Judge and findings of fact signed and filed herein, orders, adjudges and decrees:

1. The maximum freight rate laws of Missouri, of 1905 and 1907, and the passenger rate law of 1907, mentioned in paragraph 2 hereof, and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory; do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions
269 thereof should or can be rightfully enforced against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, and each of them, their agents, employés and successors, are hereby enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against complainant, its officers, agents, employés or servants, any of the provisions of, or penalties provided for in the following acts of the legislature of the State of Missouri:

First, an act approved April 14, 1905, entitled:

"An act to amend article IV, chapter 12 of the Revised Statutes

of Missouri of 1899, entitled 'Railroad classification, charges, commissioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An act entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof.'"

Third, an act approved February 27, 1907, entitled:

"An act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification, charges, commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly, approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An act to amend article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classification, charges, commissioners," by adding a new section thereto, 270 to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick, and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An act to amend article 4, chapter 12, Revised Statutes of Missouri of 1899 by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

4. There is no evidence that either defendants Abernathy Furniture Company, Kemper Grain Company, Witter, Dean or Corbin has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, and the said bill of complaint and the amendments and supplement *is* upon that ground as to said defendants in this paragraph named, dismissed. If, however, at any future time said defendants or either

of them in this paragraph named, should take any action, or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that case the complainant herein may apply to this Court by supplemental bill or otherwise as it may be advised for further orders in that behalf.

5. It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this Court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

271 And complainant may at any time by supplemental bill or otherwise bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceeding against complainant under any of said statutes hereinbefore designated, to the end that such orders or supplemental decrees may be entered as the facts and equity may warrant and require.

And the Court retains and reserves unto it, jurisdiction over all the parties hereto, and all subjects matter herein not now covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

6. The taxable costs of the case including those covered by orders of the Court, heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Stationery Company, shall be paid as follows, to-wit:

The one half by complainant and the other half by defendant to be recovered by execution to be issued by the Clerk of this Court upon application of any party in interest.

Done and ordered of record as of March 8th, 1909, in open court this March 22nd, 1909, at Kansas City, Missouri.

SMITH McPHERSON, *Judge*.

272 Afterwards, to-wit, on the 22nd day of March, 1909, a Motion was filed. Said Motion is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity cases No. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Motion.

Now comes complainant in each one of the above numbered cases, and separately moves the court to modify and change its opinion and decree in these respects:

1. To strike from the opinion paragraph 4 thereof because it is based upon a misconception, and is an erroneous statement of the law.

2. To strike from paragraph 11 of the opinion these words:

"It being a legislative act, and not a judicial one, this Court can not fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these cases, or through a Commission with like assistance."

This, for the reason that it was no part of the duty of the Court to so decide, and it is directly in conflict with the express findings of fact. At a two and a half cent rate the returns would not be sufficient compensation.

3. To strike from paragraph 11 of the opinion these words:

"Each party will pay the costs by such party made, except the compensation of the Master and stenographer. The half of
273 those will be paid by complainants, and the other half by respondents."

This, for the reason that it is contrary to the rules and principles of law and equity and to good conscience.

4. To modify the decree so far as it taxes any costs against complainant, and to retax the same, for that there is no reason in equity or good conscience to tax same against it.

FRANK HAGERMAN,
Solicitor for Complainant.

274 Afterwards, to-wit, on the 3rd day of April, 1909, an Amended Motion was filed. Said Amended Motion is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
vs.
HERBERT S. HADLEY et al.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Amended Motion.

Now comes complainant in each and every one of the above entitled causes, and separately amends the motion heretofore filed to modify and change the opinion and decree in each and every one of the said causes, and thereupon further moves the court:

1. To set aside the said decree as entered March 22, 1909, as of March 8, 1909, so far as concerns those defendants who neither appeared nor demurred, nor adopted the answers of the railroad commissionrs and attorney general, of which there are twenty-six in the eighteen cases. This, for the reason that the court erroneously made provisions for and against said defendants when they were not before it, and when complainants actually asked to dismiss as to them, to which, counsel for the said officers in open court consented. It is neither right nor just to enter a decree against persons not in court, nor can the court refuse complainant the right to dismiss as to them.

2. To set aside the portion of said decree dismissing the bill as to appearing and answering shippers, for that upon the findings and opinion, as well as upon the pleadings, the laws mentioned in paragraph 2 of the decree so entered as of March 8th, 1909, are confiscatory and void as to the shippers and passengers, and those classes of persons represented by them. Those of them who defended
275 adopted the answer and defense of the state officers. Each complainant is entitled to have the right involved duly established as against them. Because an injunction is found to be unnecessary as to them is no reason for dismissing the bill, and it is inconsistent to enter such dismissal and then attempt to hold jurisdiction against them in the future as if there had been some adjudication as to their rights.

3. To set aside the provision of said decree as to costs, for that the attempt in the decree to cure the error already rendered in taxing costs, is erroneous. In the original opinion the decision was that each party should pay the costs by such party made, except the compensation of the master and stenographer, half of which should be paid by complainants and the other half by defendants. In open court it was announced that such rule was adopted solely because the defendants were state officers and the state might not

appropriate the amount necessary to meet these costs. The supreme court has twice decided this is no excuse and no justification for taxing the costs against the other party. It was conceded by both parties that those shippers who adopted the defense of the state officers and were defended by them ought not to be compelled to pay any additional costs. This concession was agreed to by the court; yet, in the decree as now entered, this concession of both sides and the court, is absolutely ignored. The only change made as to the costs is that one-half of all the costs shall be paid by each party. There is no legal excuse or justification to tax any of these costs to complainants; ample money has already been appropriated to the state officers for the purpose of paying the same, and even if it had not been so appropriated, this would have been no reason for making an order that complainant should pay costs.

FRANK HAGERMAN,
Solicitor for Complainants.

276 Afterwards, to-wit, on the 3rd day of April, 1909, a Notice was filed. Said Notice is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

In Equity. No. 2988.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, and 3006.

Notice.

To Herbert S. Hadley, Attorney General, et al., Defendants, and their attorneys of record:

You are hereby notified that complainants will, upon Saturday, April 3rd, 1909, in the federal court room at Kansas City, Missouri, call up before the Honorable Smith McPherson, judge of said court, the motion to modify and change the opinion and decrees in the above entitled causes heretofore filed, copy of which was delivered to defendants, and also the amended motion, copy of which is herewith delivered to you.

FRANK HAGERMAN,
Solicitor for Complainants.

Received copy of above notice and of the motion and amended motion therein referred to this 27th day of March, 1909.

SANFORD B. LADD,
Solicitor for Defendants.

277 Afterwards, to-wit, on the 17th day of April, 1909, the same being a day of the regular November, 1908, term of said court, the following Amended Final Decree was filed and entered of record, to-wit:

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General, et al., Defendants.

Amended Final Decree.

This cause heretofore came on for hearing, the parties appearing by counsel, and was submitted upon the motion and amended motion to change and modify the decree of March 8, 1909, and the court being fully advised in the premises, now upon this 17th day of April, 1909, amends the said decree heretofore entered so that same shall read as follows:

The above entitled cause this March 8th, 1909, comes on for final decree upon the evidence and stipulations upon file and of record herein, the case having heretofore been fully argued and fully submitted and taken under advisement. And now at this time the court being fully advised in the premises, the parties appearing by their respective counsel, for reasons stated in an opinion by the trial judge and findings of fact signed and filed herein, orders, adjudges and decrees:

278 1. The maximum freight laws of Missouri of 1905 and 1907, and the passenger rate law of 1907, mentioned in paragraph 2 hereof, and set forth in the original bill and amendments and supplements thereto, are unreasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and to comply therewith would take the property of complainant without due process of law. None of the provisions thereof should or can be rightfully enforced against complainant, its officers, agents or employés. A finding of fact has been prepared and filed, and is hereby referred to as if made part hereof.

2. Defendants Elliott W. Major, Attorney General of the State of Missouri, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the state of Missouri, and each of them, their agents, employés and successors, are hereby enjoined from enforcing or attempting, directly or indirectly, by suit or in any other manner whatsoever to enforce against complainant, its officers, agents, employés or servants, any of the provisions of, or penalties provided for in the following acts of the legislature of the state of Missouri:

First, an act approved April 14, 1905, entitled:

"An act to amend article IV, chapter 12, of the Revised Statutes of Missouri of 1899, entitled 'Railroad classification, charges, commissioners,' by adding a new section thereto, to be known as section 1195*a*."

Second, an act approved April 15, 1905, entitled:

"An act, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter concerning railroad classification—charges—commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof.' "

279 Third, an act approved February 27, 1907, entitled:

"An Act to repeal sections 1191 and 1192 of chapter 12, article 4, Revised Statutes of Missouri, 1899, entitled 'Railroad classification—charges—commissioners,' by striking out sections 1191 and 1192 and enacting the following new sections in lieu thereof, to be known as sections 1191 and 1192 and 1192*a*."

Fourth, an act approved March 19, 1907, entitled:

"An act to repeal an act of the 43rd general assembly approved April 15, 1905, entitled 'An act to amend chapter 12 of the Revised Statutes of Missouri, revision of 1899, entitled "Corporations, private," by repealing section 1194 of said Revised Statutes, being part of article IV of said chapter, concerning railroad classification, charges, commissioners, and to enact in lieu thereof the following new sections providing for the regulation of freight charges by railroads and the recovery of penalties for the violation thereof,' and to repeal an act of the 43rd general assembly, approved April 14, 1905, entitled 'An act to amend Article IV, chapter 12, of the Revised Statutes of Missouri, 1899, entitled "Railroad classifications, charges, commissioners," by adding a new section thereto to be known as section 1195*a*, fixing the charges for carrying undressed stone, crushed rock and building or paving brick,' and to enact in lieu thereof certain new sections, to be known as sections 1194, 1194*a*-1, 1194*b*-1 and 1194*c*-1, providing for the regulation of freight charges by railroads and prescribing the punishment for a violation thereof, which new sections shall read as follows:"

Fifth, an act approved March 19, 1907, entitled:

"An act to amend article 4, chapter 12, Revised Statutes of Missouri, of 1899, by adding a new section thereto, to be known as section 1195*a*, and relating to freight charges and classifications."

3. The other defendants who are officers, and their successors, are likewise enjoined from enforcing or attempting to enforce any of said statutory enactments.

280 4. There is no evidence that either defendants Abernathy Furniture Company, Kemper Grain Company, Witter, Dean or Corbin has threatened or intended to institute any action or proceeding against complainant as averred in the bill of complaint, but they have adopted the answers of the Railroad Commissioners and Attorney General. The said bill of complaint and the amendments

and supplement to the extent and so far only as it seeks present injunctive relief against them, is upon that ground as to said defendants in this paragraph named, dismissed without prejudice. If, however, at any future time said defendants or either of them in this paragraph named, should take any action or threaten or attempt to take any action under either or all of said statutes hereinbefore designated, then and in that case the complainant herein may apply to this court by supplemental bill or otherwise as it may be advised, for further orders in that behalf.

5. It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf.

And complainant may at any time by supplemental bill or otherwise, bring into the case any person, firm or corporation not expressly subject to this decree, who may attempt or threaten to take any action or institute any proceeding against complainant under any of said statutes hereinbefore designated, to the end that such orders or supplemental decrees may be entered as the facts and equity may warrant and require.

And the court retains the reserves unto it, jurisdiction over all the parties hereto, and all subjects matter herein not now covered by the pleadings, to the end that such other and further orders and decrees may be made hereafter as may become necessary by reason of any changed condition as to the facts, equities or rights that may hereafter take place or arise.

281 & 282 6. The taxable costs of the case including those covered by orders of the court heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Stationery Company, shall be paid as follows, to-wit: The one half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest.

7. Some of the defendants having announced their intention to appeal, it is now ordered that no appeal shall supersede the injunctive portions of this decree, but pending any such appeal the complainant shall be permitted to charge the rates permitted by sections 1191 and 1192 of the Revised Statutes of Missouri 1899, the same as if the Passenger Rate Act approved February 27, 1907, and herein held to be confiscatory, had not been passed. Complainant having by order herein of June 17, 1907, been required to temporarily adopt the rate fixed by said Passenger Rate Act, shall be and is hereby permitted, free from the interference of the parties and classes represented by them, who are hereby ordered not to interfere, to restore and put in force the rates authorized by said sections 1191 and 1192, this court reserving power and jurisdiction from time to time to enforce, change and modify this paragraph

of this decree, as well as to protect the complainant in being restored to the right of which said order temporarily deprived it.

8. This decree shall be binding upon and enforceable against the said defendants not dismissed, their assistants agents, attorneys, and employes, and any class or classes of persons or officers represented by them.

(Signed) SMITH McPHERSON, *Judge.*

283 Afterwards, to-wit, on the 6th day of March, 1911, Declinations to Join in Appeal were filed. Said declinations are in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Abernathy Furniture Company, Kemper Grain Company and George W. Witter; and D. J. Dean and W. D. Corbin, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss, and George J. Dodd in the offices of judges of the County Court of said Jackson County, Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Abernathy Furniture Co., Kemper Grain Company, George W. Witter, D. J. Dean and W. D. Corbin:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said appeal
284 without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March,

1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants,
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 25th day of February, 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

Witness- to Signature-.

CALEB S. MONROE.	JOSEPH M. PATTERSON.
CALEB S. MONROE.	CHARLES E. MOSS,
CALEB S. MONROE.	ABERNATHY FURNITURE CO.,
	By F. L. HALL, *Pres.*
PORTER B. GODARD.	H. C. GILBERT.
PORTER B. GODARD.	E. L. MARTIN.
PORTER B. GODARD.	E. E. AXLINE.
CALEB S. MONROE.	THE KEMPER GRAIN CO.,
	By D. F. PEAZZEK.
CALEB S. MONROE.	W. D. CORBIN.
CALEB S. MONROE.	GEORGE J. DODD.
CALEB S. MONROE.	O. H. GENTRY, JR.
CALEB S. MONROE.	ARTHUR C. WARNER.

285 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Abernathy Furniture Company, Kemper Grain Company and George W. Witter; and D. J. Dean and W. D. Corbin, Defendants.

To Joseph M. Patterson, Charles E. Moss and George J. Dodd and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss, and George J. Dodd in the offices of judges of the County Court of said Jackson County, Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Abernathy Furniture Co., Kemper Grain Company, George W. Witter, D. J. Dean and W. D. Corbin:

Each of you is hereby invited to join with the undersigned in a petition for an appeal in the above entitled cause to the Supreme Court of the United States, to reverse the decree in the above entitled cause, rendered on the 8th day of March, 1909, as amended by the decree herein entered on the 17th day of April, 1909, or you will be deemed to have acquiesced in said decree as amended, and we shall present said petition for an appeal and prosecute said
286 appeal without joining you as a party.

Said petition for an appeal will be presented to the said Circuit Court for allowance, at the court room of said court in Kansas City, Jackson County, Missouri, on Monday, the 6th day of March, 1911, at 9 o'clock A. M., or as soon thereafter as said petition can be heard.

ELLIOTT W. MAJOR,
Attorney General of the State of Missouri;
JOHN A. KNOTT,
H. R. OGLESBY,
FRANK A. WIGHTMAN,
Railroad and Warehouse Commissioners, Defendants.
By ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for said Defendants.

Service of the above is accepted this 25 day of Feb. 1911, and we, the undersigned, severally decline to join in said petition for an appeal.

GEORGE W. WITTER.

Witness to signature:

ED. DILLON,
Dep't Sheriff Bates County.

The Sheriff's Return thereon is in words and figures as follows:

Fees.

Service of Copy	$1.00
Mileage	3.00
	450

W. J. BULLOCK,
By ED. DILLON,
Dep't Sheriff of Bates County.

286½ Afterwards, to-wit, on the 6th day of March, 1911, an Affidavit was filed. Said affidavit is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Abernathy Furniture Company, Kemper Grain Company, and George W. Witter and D. J. Dean and W. D. Corbin, Defendants.

STATE OF MISSOURI,
County of Jackson, ss:

R. J. Ingraham, being duly sworn, on his oath says that he is and has been for many years an attorney at law, practicing his profession in Kansas City, Missouri; that he was for many years acquainted with the above named defendant, D. J. Dean, who also resided in said Kansas City, and was his attorney at the time of his death; that the said D. J. Dean died in Kansas City, Missouri, on the 15th day of January, 1911.

R. J. INGRAHAM.

Sworn to and subscribed before me, the undersigned, a notary public within and for the County of Jackson, State of Missouri, at my office in Kansas City, Missouri, this 3rd day of March, A. D. 1911.

My commission as notary public expires September 17th, 1914. Witness my hand and notarial seal.

[SEAL.]

CALEB S. MONROE,
Notary Public.

287 Afterwards, to-wit, on the 6th day of March, 1911, defendants' Assignment of Errors was filed. Said Assignment of Errors is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Abernathy Furniture Company, Kemper Grain Company, and George W. Witter and D. J. Dean and W. D. Corbin, Defendants.

Assignment of Errors.

Now come John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, and aver that in the record and proceedings and decree in the above entitled cause, there is manifest error, in this:

1. The court erred in adjudging and decreeing, by its amended decree, that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence shows that said laws are reasonable and compensatory, and that they do afford the complainant a fair and reasonable return upon the value of its property; and upon the evidence in the case, the complainant's bill and its amended and supplemental bill, in so far as they sought for any relief against, or brought into question the validity of said maximum freight rate laws, should have been dismissed.

2. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempt-

ing, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employes or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

3. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the
288 State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employes or servants, any of the provisions of or penalties provided for in the acts of the Legislature of the State of Missouri, mentioned in said decree, and approved, respectively, April 14, 1905, April 15, 1905, and two approved March 19, 1907.

4. The court erred in decreeing that the maximum freight rate laws of 1905 and 1907 are unreasonable and confiscatory, do not afford the complainant any fair or reasonable and confiscatory, do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of those laws and the evidence does not establish clearly and beyond all doubt their invalidity.

5. The court erred in decreeing that the freight rate laws of 1905 and 1907 were confiscatory and therefore deprived the complainant of its property without due process of law, because the burden of proof upon that issue was upon the complainant, and that burden was not sustained. The exact gross revenue from intrastate business for any given period was easy of ascertainment. The ascertainment of the expense of earning that revenue was difficult by reason of the fact that interstate and intrastate freight were transported in the same trains and often in the same cars. It was in the power of the complainant, at any time during the litigation, to have determined, by actual observation and investigation for a period which would be typical, the volume of freight, both intrastate and interstate, carried on each of its trains within the State of Missouri during such period, the revenue from each class of freight and also, quite closely, the expense of moving each of said trains within the State, and to have exhibited to the court the result of such observation and investigation. The court would thus have been enabled to determine approximately how much of the total expense of moving said trains should be assigned to the intrastate and interstate freight, respectively, contained in them.

No evidence of this character was adduced, no tests of this kind made. Upon this question the court was left to reach a conclusion upon the opinions of witnesses. No decree should have been rendered for complainant until this evidence of actual facts of vital importance, which was at its command, had been adduced to the court.

6. The court erred in adjudging and decreeing in its amended

final decree herein that the maximum freight rate laws of Missouri of 1905 and 1907, were unreasonable and confiscatory, and did not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; and that none of the provisions thereof should or can be rightfully enforced against the complainant, its officers, agents, or employes.

Because it appears from the evidence that a very large part of the intrastate freight transported by the complainant is not governed as to the rates to be charged therefor by the Acts of 1905 and the Acts of 1907, but that the maximum rates for the transportation thereof are fixed by the State Board of Railroad and Warehouse Commissioners, by authority of law, conferring upon them that power. It further appears from the evidence, that the complainant has not been charging for the transportation of such freight the rates so fixed by the State Board of Railroad and Warehouse Commissioners, but rates less than those so fixed. But the com-
289 plainant failed to show and made no effort to show what its revenue from the intrastate freight business would have been had it charged the rates allowed by the State Board of Railroad and Warehouse Commissioners for such portion of the freight carried by it, as was not governed by the Acts of 1905 and 1907; and therefore there is no evidence in the case that if the complainant had charged such rates and had also complied with the Acts of 1905 and 1907, it would not have received a revenue from its intrastate freight business which would have afforded it a fair, adequate and just return for doing such business. If it had charged what it might, according to the law of the State, have charged for the transportation of such freight, its receipts for doing its entire intrastate freight business might, for any evidence which appears in the case, have been sufficient to afford it all the net profits to which it was entitled.

7. The court erred in adjudging and decreeing in the amended final decree that the maximum freight rate laws of Missouri of 1905 and 1907 are unreasonable and confiscatory and do not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law, because the said acts of 1905 took effect on the 16th day of June, 1905, and the original bill herein, alleging the unconstitutionality of said Acts of 1905, and seeking to enjoin their enforcement, was filed by the complainant on said 16th day of June, 1905, and on the same day a restraining order was issued herein, enjoining the defendants, the Railroad and Warehouse Commissioners, "from taking or making out or printing or delivering any schedule of rates for complainant, containing the maximum rates fixed by said Acts." And on the 12th day of July, 1905, the court continued said restraining order as a temporary injunction, which was in force as against said defendants from said date until the final decree was entered. Therefore, at the time of the filing of said bill and the issue of said restraining order, the defendants, said Railroad and Warehouse Commissioners, because the law

final not yet taken effect, had enjoyed no opportunity to revise the then existing schedule of rates.

The said defendants, Railroad and Warehouse Commissioners, had authority, under the law, to fix maximum rates for the transportation of that portion of the intrastate freight for which rates were not fixed by the Acts of 1905, which said portion was very large in volume and produced to the complainant much the larger part of its entire revenue for the transportation of intrastate freight. The said Railroad and Warehouse Commissioners might, if they had not been prevented by the restraining order and temporary injunction herein, have fixed such rates for the transportation of said portion of such intrastate freight, and made schedules therefor, which schedules should also have embraced the maximum rates for the commodities mentioned in the said Acts of 1905, as would have permitted the complainant, while observing said schedules and said acts of 1905, to have derived from its intrastate freight business, as a whole, a gross revenue sufficient to have yielded to it a fair, just and adequate net return or profit from the doing of its said intrastate freight business. The complainant should have deferred the institution of this suit until the said Board of Railroad and Warehouse Commissioners had fixed rates and adopted schedules so low as to disable the complainant from realizing an adequate revenue upon its entire intrastate freight business.

Therefore, the action was prematurely brought; and for this reason no restraining order or temporary injunction or final decree should have been rendered as to either of said maximum freight rate Acts.

8. The court erred in adjudging and decreeing by its amended final decree that the passenger rate law of 1907, approved February 27, 1907, is unreasonable and confiscatory and does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because, upon the evidence in the case, said passenger rate law is reasonable and compensatory and does afford the complainant a fair and reasonable return upon the value of its property; and upon the evidence in the case, the complainant's bill, and its amended and supplemental bills, in so far as they sought for any relief against or brought into question the validity of said passenger rate law of 1907, should have been dismissed.

9. The court erred in decreeing that the passenger rate law of 1907 is unreasonable and confiscatory, does not afford the complainant any fair or reasonable return upon the value of its property, and that to comply therewith would take the property of complainant without due process of law; because the evidence in the case is not sufficient to overcome the presumption in favor of the validity of the law, and the evidence does not establish clearly and beyond all doubt its invalidity.

10. The court erred in its amended decree in thereby adjudging and decreeing that the defendant, Elliott W. Major, Attorney General of the State of Missouri, be enjoined from enforcing, or attempt-

ing, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said Act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

11. The court erred in its amended decree in thereby adjudging and decreeing that the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad Commissioners of the State of Missouri, be enjoined from enforcing, or attempting, directly or indirectly, by suit or in any other manner whatsoever, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or penalties provided for in said act of the Legislature of the State of Missouri, mentioned in said decree and approved February 27, 1907.

12. The defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, for themselves assert that the court erred in that part of its decree whereby it enjoined them from enforcing, or attempting, directly or indirectly, to enforce against the complainant, its officers, agents, employés or servants, any of the provisions of or the penalties provided for in the passenger rate Act, approved February 27, 1907; because, under the laws of the State of Missouri, they have no functions of any kind to perform in relation to rates for the carriage of passengers, nor do such laws vest in them any authority, or devolve upon them any duties to be performed by them, directly or indirectly, to require or compel obedience to any laws relating to rates for the carriage of passengers.

13. The court erred in permitting the complainant, against the objection of the defendants to file herein its alleged amended and supplemental bill of complaint and the amendment thereto, because the original bill was based upon the Acts of the 43rd General
291 Assembly of the State of Missouri, approved April 14, 1905, and April 15, 1905, which fixed maximum rates for intrastate freight, and the alleged amended and supplemental bill and the amendedment thereto is based upon the Acts of the 44th General Assembly of the State of Missouri, approved March 19, 1907, which repealed said Acts of 1905 and established a new maximum of rates for intrastate freight, and the Act of the 44th General Assembly of the State of Missouri, approved March 19, 1907, fixing rates for the transportation of fruit, and the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of rates for passenger traffic, and the matters set forth in the said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill of complaint herein.

14. The court erred in permitting the complainant, against the objection of defendants, to file the alleged amended and supplemental bill of complaint and the amendment thereto, so far as the same relates to the Act of the 44th General Assembly of the State of Missouri, approved February 27, 1907, fixing a maximum schedule of passenger rates, because the matters set forth in said alleged amended

and supplemental bill, and the amendment thereto, relative to said Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, are not germane to or supplemental of any of the matters alleged in the original bill.

15. The court erred in overruling the demurrer of the defendants to the alleged amended and supplemental bill of complaint and the amendment thereto, because the matters contaised in said alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill, and if they constitute any cause of action whatever, constitute a new, original and independent cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

16. The court erred in overruling the demurrer of defendants to the portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto, relative to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because such portions and paragraphs of the alleged amended and supplemental bill of complaint and the amendment thereto, are not germane to or supplemental of the original bill of complaint, and constitute, if anything, a new and independent cause of action not connected with or dependent upon the original cause of action, and one that accrued, if at all, long after the original bill was filed.

17. The court erred in granting to the complainant the relief asked, with respect to the Act of the 44th General Assembly of the State of Missouri, fixing a maximum schedule of passenger rates, because it was not authorized to take jurisdiction of that matter upon a bill of complaint filed as an amendment or supplement of a bill based upon Acts of the 43rd General Assembly of the State of Missouri, which were confined to freight rates and had been repealed.

18. The court erred in enjoining the defendant, Elliott W. Major, Attorney-General of the State of Missouri, from prosecuting the suits for injunctive relief, instituted by his predecessor in office, Herbert S. Hadley, in the State Court of Missouri, against the complainant prior to the filing of the alleged amended and supplemental bill of complaint herein.

292 19. The court erred in finding that the expense of doing the intrastate business over the interstate is greater for carrying freight by at least fifty per cent. By this language in the finding is meant at least fifty per cent more in proportion to revenue, while upon the weight of credible evidence in the case, the expense of doing the intrastate freight business over the interstate is not greater than thirty per cent per ton per mile.

20. The court erred in finding that the evidence shows that the cost of doing the intrastate freight business, as between intrastate and interstate, apportioned upon the revenue basis with added extra cost, brings a result which is fair, representative or just.

21. The court erred in finding that aside from the revenue basis, the evidence shows that the amount ascertained by the court in any of the cases, as the expense and extra cost of doing the intrastate

freight business, is fair or justly represents the expense of doing the intrastate freight business.

The appellants assert, on the contrary, that aside from the revenue basis, there is no evidence in the case from which the result as found by the court as to the expense of doing the intrastate freight business can be reached.

22. The court erred in finding that the proper method of dividing the total expense of doing complainant's freight business in the State and assigning the proper proportion thereof to the intrastate freight business, was by the application of the revenue theory, and in accordance with that theory, dividing the total expense between the two classes of business in proportion to the revenue derived from each, and then to the portion thus assigned to the intrastate freight business, adding such an amount as would represent fifty per cent greater expense in proportion to revenue for the intrastate than for the interstate business. The consequence was to burden the intrastate freight business with a portion of the total expense very largely in excess of its just proportion and a much greater share thereof than was actually incurred in doing that business.

The court should have found that the proper method of ascertaining that part of the total State freight expense justly assignable to the intrastate freight, was by determining, as closely as possible, the average cost per ton mile of handling and transporting intrastate and interstate freight, respectively. The average cost per ton per mile deducted from the average revenue per ton per mile (which is easily ascertainable from the evidence) would have produced the net revenue per ton per mile derived from each class of freight. The court erred in its finding which rejected this method, by the application of which the evidence in the case shows that complainant might have complied with the freight rate Acts of 1905 and 1907, and would still have derived from the doing of its intrastate business an adequate profit fully equivalent to any net return to which it is by law entitled.

23. The court erred in finding that the sum total of the extra cost of doing the intrastate freight business would not be changed if ascertained according to the ton mile theory.

On the contrary, the evidence shows clearly that if the expense of doing the intrastate freight business be ascertained by the application of the ton mile theory, that expense would be found to be very much less than the amount found by the court; so much less as to leave to the complainant a reasonable net return for doing the business.

24. The court erred in finding that the revenue basis is the
293 proper method of ascertaining the expense of the intrastate passenger traffic. In adopting that method the court divided the total expense of the passenger business done in the State between the intrastate and the interstate business by assigning to each class such a proportion of such total expense as the revenue from each class of business bore to the total revenue from the State passenger traffic, and then adding to the proportion thus ascertained for the intrastate, such an amount as would represent twenty-five per cent

greater expense in proportion to revenue for the intrastate than for the interstate business. The result of the application of this method was to charge the intrastate business with a much larger share of the total expense than was actually incurred in doing that business.

The true method is to ascertain the average revenue and expense of carrying a passenger one mile, in each class of business, and the difference would be the net revenue or deficit on each passenger mile.

The evidence shows that the net revenue per passenger mile is greater in the intrastate than in the interstate business, and that the net revenue from its intrastate passenger business, if charged for at the rates fixed by the Act of February 27, 1907, affords to the complainant a reasonable and adequate return for doing the business.

25. The court ered in finding that the expense of doing the State passenger business over the interstate is at least twenty-five per cent; this language meaning twenty-five per cent more in proportion to revenue. The evidence in the case does not support this finding.

26. The court erred in adopting the tables of earnings and expenses of the complainant, set forth in the finding of facts, because the said tables of expenses and of earnings did not cover any fairly representative period of operations of the complainant, and because said tables of expenses and earnings are not supported by any competent evidence in the case.

27. The court erred in finding that the short line between two competitive points, necessarily fixes the rate. If the rate is thus fixed it is because the complainant and other railroad companies of the State have agreed with each other that it shall be so fixed.

28. The court erred in finding that it was conceded by the experts that the companies accurately and honestly kept their books, showing the facts set out in the findings of the court. The books of the companies did not show the facts set out in said findings, nor did the experts for the State concede that they did.

29. The court erred in finding (as stated in the opinion), that evidence in the case tended to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of the rates. Not a reduction in rates, but a general depression in business and the want of business to keep the men employed, was the cause of their discharge.

30. The court erred in finding that the value of the complainant's franchise, included in the total valuation of its property as fixed by the State Board of Equalization, was so small a per cent of such total valuation as to make no appreciable difference in the result of the case.

On the contrary, the evidence shows that the value of the franchise was a substantial part of such total valuation.

31. The court erred in finding that if the value of complainant's franchise were altogether omitted from the value of its property, it could not have obtained from the operation of its property, or from the doing of the intrastate freight business, the return to which it is entitled.

294 32. The court erred in finding that the complainant was entitled to a return upon the value of its franchise.

Wherefore, these defendants pray that the said amended final decree be reversed, and that said court may be directed to enter a decree dismissing the complainant's bill, its amended and supplemental bill, and the amendment thereto.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Solicitors for Defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

295 Afterwards, to wit, on the 6th day of March, 1911, Defendants' Petition for Appeal was filed. Said Petition for Appeal is in words and figures as follows:

296 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss, and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Abernathy Furniture Company, Kemper Grain Company, and George W. Witter and D. J. Dean and W. D. Corbin, Defendants.

The above named defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, conceiving themselves aggrieved by the decree rendered as of the 8th day of March A. D. 1909 but signed filed and entered on the 22nd day of March, A. D. 1909, as amended by the decree entered on the 17th day of April, A. D. 1909, in the above entitled cause do hereby appeal from said decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

And said defendants further show to the court that defendant D. J. Dean has departed this life and that they have, in writing, notified the other defendants in said cause, to-wit:

Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successors to said Arthur C. Warner in the office of Treasurer of said Jackson County; Abernathy Furniture Company, Kemper Grain Company, George W. Witter and W. D. Corbin of their intention to present this petition for an appeal, and have, in writing, invited said other defendants to join with them in such petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices and invitations, acceptances declinations and proof of death of said D. J. Dean are now presented to the court and filed herewith.

ELLIOTT W. MAJOR,
Attorney General;
JOHN M. ATKINSON,
Assistant Attorney General;
SANFORD B. LADD,
Counsel for John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri.

Dated this 6th day of March, A. D. 1911.

The foregoing petition for appeal is allowed. Dated March 6th 1911.

(Signed) SMITH McPHERSON, *Judge.*

297 Afterwards, to-wit, on the 6th day of March, 1911, a Bond for Appeal was approved and filed. Said bond is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. —.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Abernathy Furniture Company, Kemper Grain Company, and George W. Witter and D. J. Dean, and W. D. Corbin, Defendants.

Know all men by these presents: That we, John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, as principals,

and J. W. Perry and W. H. Seeger as sureties, are held and firmly bound unto the Kansas City Southern Railway Company in the sum of One Thousand Dollars ($1000) to be paid unto the said The Kansas City Southern Railway Company, its successors or assigns; to which said payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 6th day of March, A. D. 1911.

This obligation is upon this condition:

Whereas, the above named John A. Knott, H. R. Oglesby,
298 Frank A. Wightman and Elliott W. Major have prosecuted their appeal to the Supreme Court of the United States to reverse the decree rendered, and entered in the above entitled cause by the Circuit Court of the United States for the Western Division of the Western District of Missouri;

Now if the above named John A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, shall prosecute their said appeal to effect, and answer all costs if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and virtue.

JOHN A. KNOTT. [SEAL.]
H. R. OGLESBY. [SEAL.]
FRANK A. WIGHTMAN. [SEAL.]
J. W. PERRY. [SEAL.]
W. H. SEEGER. [SEAL.]
ELLIOTT W. MAJOR. [SEAL.]

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) SMITH McPHERSON, *Judge.*

299 Afterwards, to-wit, on the 6th day of March, 1911, the following Order Allowing Appeal to defendants was filed and entered of record:

300 In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,

vs.

JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad and Warehouse Commissioners; Elliott W. Major, Attorney General of the State of Missouri; Joseph M. Patterson, Charles E. Moss and George J. Dodd, Judges of the County Court of Jackson County, Missouri; Arthur C. Warner, Treasurer of Jackson County, Missouri; Abernathy Furniture Company, Kemper Grain Company and George W. Witter, and D. J. Dean and W. D. Corbin, Defendants.

Now at this day come the defendants, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Com-

missioners, and Elliott W. Major, Attorney General of the State of Missouri, and present their petition for an appeal to the Supreme Court of the United States from the final decree rendered herein, and also present an assignment of errors accompanying said petition, and at the same time make it appear to the satisfaction of the court that defendant D. J. Dean has departed this life, and that the petitioners have, in writing, notified the other defendants in this cause, that is to say, Joseph M. Patterson, Charles E. Moss and George J. Dodd, and Hugh C. Gilbert, Edward L. Martin and Edward E. Axline, as successors respectively to said Joseph M. Patterson, Charles E. Moss and George J. Dodd, in the offices of judges of the County Court of said Jackson County; Arthur C. Warner and Overton H. Gentry, Jr., as successor to said Arthur C. Warner in the office of Treasurer of said Jackson County; Abernathy Furniture Company, Kemper Grain Company, George W. Witter and W. D. Corbin of their (the said petitioners') intention to present said petition for an appeal, and have, also in writing, invited said other defendants to join with them, the said petitioners, in said petition for an appeal, and that all of said other defendants have, in writing, accepted service of said notices and invitations, and have, also in writing, severally declined to join in said petition for an appeal, which said notices, invitations, acceptances, declinations and proof of death of said D. J. Dean are now, by said petitioners, presented to the court; and it is thereupon ordered by the court that said petition for an appeal, said assignment of errors, said written notices, invitations, acceptances, declinations and proof of death be filed and made a part of the record in this cause, and it is further ordered that the interests of the defendants so presenting said petition for an appeal be severed in said appeal from the interests of the said other defendants herein, and upon consideration of said petition, the court now allows the same, and to the said defendants, ohn A. Knott, H. R. Oglesby, Frank A. Wightman and Elliott W. Major, an appeal to the Supreme Court of the United States from the final decree rendered in this cause in accordance with the prayer of said petition. And at the same time the said defendants present their bond for an appeal in the sum of One Thousand Dollars ($1,000) with J. W. Perry and W. H. Seeger as sureties thereon, which said bond is now approved by the court, and it is ordered that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be transmitted to the said Supreme Court of the United States.

(Signed) SMITH McPHERSON, *Judge.*

Dated Kansas City, Missouri, March 6, 1911.

301 Afterwards, to-wit, on the 6th day of March, 1911, an assignment of errors was filed. Said assignment of errors is in words and figures as follows, to-wit:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Assignment of Errors.

Now comes complainant and respectfully shows that the court in the proceedings and decree in the above entitled cause committed manifest error in each of the following respects:

1. In rendering and entering that portion of paragraph 5 of the original and amended decree reading:

"It is further ordered, adjudged and decreed that the defendants, or any of them, when the circumstances have changed so that the rates fixed as aforesaid shall yield to complainant reasonable compensation for the services aforesaid, may apply to this court by supplemental bill or otherwise, as defendants or either of them may be advised, for further orders in their behalf."

2. In rendering and entering paragraph 6 of the amended final decree reading:

"The taxable costs of the case including those covered by orders of the court, heretofore made or hereafter made on motion to tax or retax, and including printing bill of Buxton-Skinner Sta-
302 tionery Company shall be paid as follows, to-wit: The one-half by complainant and the other half by defendants who are Railroad Commissioners and the Attorney General, to be recovered by execution to be issued by the clerk of this court upon application of any party in interest."

3. In not decreeing to be regulation of commerce among the states and invalid, of no force, and contrary to the provisions of section 8, article 1 of the constitution of the United States, each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree; the purpose of this assignment being to make it a separate assignment of error as to each of said acts, the same as if it were separately written out and applied to each act.

4. In not decreeing that the rights, privileges and immunities of complainant were abridged, that complainant was denied the equal protection of the law and deprived of its property without due process of law, all contrary to the provisions of the fourteenth amendment to the constitution of the United States, by the state making and enforcing each of the legislative acts mentioned in paragraph 2 of the amended final decree; the purpose and intent hereof being to separately assign this error as to each one of said acts the same as if so separately written.

5. In holding that neither the freight act approved March 19,

1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, nor the enforcement of either of them, directly affected interstate commerce.

6. In holding that neither the freight act approved March 19, 1907, nor that approved April 14, 1905, nor that approved April 15, 1905, nor the passenger act approved February 27, 1907, was discriminatory against complainant, or, as to it, violative of the fourteenth amendment to the constitution of the United States
303 when the act was upon its face general in its terms, applicable to all companies in the state, and the findings show that it is confiscatory as to each of the other companies in the state as to complainant's competitors.

7. In holding that the passenger act approved February 27, 1907, was upon its face valid, whereas it was discriminatory and unreasonably classified companies according to mileage and according to ownership, control and occupation so that all roads in the state were arbitrarily required to charge two cents per mile, except those of less than forty-five miles in length, which were permitted to charge four cents per mile, provided they were not owned, leased, controlled or occupied by any trunk line, company or corporation.

8. In holding that the passenger act approved February 27, 1907, was on its face valid, when it was discriminatory and unreasonable, and classified the fares to be charged by providing half fare for children.

9. In holding to be valid upon its face the freight act approved April 15, 1905, whereas it was discriminatory and unreasonable in that it fixed rates to be charged by any individual or railway company owning, operating, managing and leasing a railroad, but applied the penalties only to railway companies or corporations.

10. In not decreeing to be void each of the acts of the legislature of Missouri mentioned in paragraph 2 of the amended final decree, for that the penalties were so enormous, unreasonable and severe as to be an attempt to coerce complainant to put them in and prevent it from having a judicial inquiry and review; all contrary to the fourteenth amendment to the constitution of the United States; the purpose being to make this a separate assignment as to each of said acts the same as if they were separately written out and applied thereto.

304 For all of which reasons the decree and holding of the Circuit Court in such regard should be reversed.

FRANK HAGERMAN,
Solicitor for Complainant.

305 And on the 6th day of March, 1911, a petition for cross appeal was filed. Said petition for cross appeal is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

The above named complainant, conceiving itself aggrieved by the decree rendered and entered on March 22, 1909, as of March 8, 1909, as amended by the decree rendered and entered on April 17, 1909, at the November, 1908, term of court in the above entitled cause, does hereby apply for an appeal, and does appeal from such decree to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herewith, and prays that this appeal may be allowed as a cross-appeal, and such steps taken to perfect the same as may be required by law, an appeal having already been prosecuted for the decree, and a transcript taken by the attorney general and railroad and warehouse commissioners, defendants in the cause.

FRANK HAGERMAN,
Solicitor for Complainant.

The foregoing petition for appeal is presented and allowed this March 6, 1911, by the undersigned, Judge who rendered the decree appealed from.

(Signed) SMITH McPHERSON, *Judge.*

306 Afterwards, to-wit, on the 6th day of March, 1911, a bond for cross appeal was approved and filed. Said bond is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Bond.

Know all men by these presents that the Kansas City Southern Railway Company as principal, and Frank H. Moore as surety, are held and firmly bound unto the above named defendants in the full and just sum of two hundred and fifty dollars to be paid to

said defendants, their heirs, executors, administrators or assigns, for which payment well and truly to be made, we bind ourselves, our successors, heirs, executors and administrators jointly and severally by these presents.

Dated this March 6, 1911.

Whereas lately, at the November, 1908, term of the above named court, in the above entitled cause, a decree was rendered against said complainant, which has obtained a cross appeal to reverse the action of the court in the aforesaid suit and a citation directed to the said defendants citing and admonishing them to be and
307 appear in the Supreme Court of the United States at the city of Washington, District of Columbia, thirty days from and after the date of the said citation.

Now, the condition of the above obligation is such that if the said cross appellant and complainant above named shall prosecute said cross appeal to effect, and answer all damages and costs if it fail to make good its appeal, then the above obligation to be void; otherwise to remain in full force and virtue.

KANSAS CITY SOUTHERN RAILWAY CO., *Principal,*
By FRANK HAGERMAN,
Agent and Attorney.
FRANK H. MOORE, *Surety.*

The above bond is hereby approved and ordered to be filed and made a part of the record this March 6, 1911.

(Signed) SMITH McPHERSON, *Judge.*

308 And on the 6th day of March, 1911, the following order allowing cross appeal was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT, H. R. OGLESBY, and FRANK A. WIGHTMAN, Railroad Commissioners, et al., Defendants.

Order.

This cause coming on for hearing this March 6, 1911, upon the application for an appeal by the complainant, together with its assignment of errors, an appeal is hereby allowed and bond for appeal is hereby fixed in the sum of two hundred and fifty dollars.

Inasmuch as this is a cross appeal, the clerk is directed to forward a transcript of all proceedings in the cause since the preparation and filing of a transcript of the record in the appeal taken by the defendants.

(Signed) SMITH McPHERSON, *Judge.*

309 Afterwards, to wit, on the 31st day of March, 1911, the following Order was filed and entered of record:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

#2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
vs.
JOHN A. KNOTT et al., Defendants.

For good cause shown, that is, because the Clerk of said Circuit Court is unable to prepare a transcript of the record herein within thirty days from the date of the day of signing the citation herein it is

Ordered that the time for filing said record with the Clerk of the Supreme Court be, and the same is hereby, enlarged; and it is

Ordered that said record may be filed with the Clerk of the Supreme Court on or before the first day of August, 1911.

(Signed) SMITH McPHERSON, *Judge.*

Dated Kansas City, Mo., March 31, 1911.

310 Afterwards, to-wit, on the 13th day of April, 1911, a Stipulation was filed. Said Stipulation is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2993.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Complainant,
v.
JOHN A. KNOTT et al., Defendants.

Whereas, John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Eliott W. Major, Attorney General of the State of Missouri, defendants in the above entitled cause, have been allowed an appeal therein to the Supreme Court of the United States.

And, Whereas, the said The Kansas City Southern Railway Company, Complainant, has been allowed a cross-appeal herein to the Supreme Court of the United States.

And, Whereas, the said Railroad and Warehouse Commissioners and said Attorney General were, by said circuit court, allowed an appeal, and the Chicago, Burlington and Quincy Railroad Company was allowed a cross-appeal to the Supreme Court of the United States

from a decree rendered by said circuit court in a cause then pending in said Circuit Court of the United States, wherein said Chicago, Burlington and Quincy Railroad Company was complainant, and said Railroad and Warehouse Commissioners and said Attorney General and others were defendants.

And, Whereas, the evidence offered, taken and received in the said circuit court in the above entitled cause is included in the transcript and printed record in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant.

And, Whereas, all of said evidence was for the purpose of the hearing in said Supreme Court of the United States of the said appeal and cross-appeal in said cause wherein the said Chicago, Burlington and Quincy Railroad Company was complainant, printed, under the direction of the clerk of the Supreme Court of the United States, and is contained in five printed volumes now on file in the office of the clerk of said Supreme Court in the causes therein pending, numbered 21821, wherein John A. Knott and others are appellants and the Chicago, Burlington and Quincy Railroad Company is appellee, and numbered 21837, wherein the Chicago, Burlington and Quincy Railroad Company is appellant and John A. Knott and others are appellees.

Now, therefore, in order to save the parties hereto the useless expense which would be incurred in the preparation of a complete transcript of the record and the evidence in the above entitled cause, it is stipulated and agreed between the parties hereto that upon the hearing in the said Supreme Court of the appeal and the cross-appeal in the above entitled cause, the evidence contained in said five printed volumes shall be taken and regarded as the evidence in the above entitled cause with the same effect as if it had been written out and certified in this cause by the clerk of the circuit court, and that the evidence contained in said five printed volumes, supplemented by a transcript of all the pleadings, papers, decrees and orders peculiar to the above entitled cause, shall be taken and regarded in said Supreme Court as a complete transcript of the record and proceedings in the above entitled cause, and that it shall not be necessary for the clerk of the circuit court to include in the transcript prepared by said clerk any evidence contained in said five printed volumes.

ELLIOTT W. MAJOR,
Attorney General, Solicitors for John A. Knott et al., Appellants.
FRANK HAGERMAN,
Solicitor for K. C. So. Ry. Co., Appellee.
FRANK HAGERMAN,
Solicitor for K. C. So. Ry. Co., Cross-Appellant.
ELLIOTT W. MAJOR,
Attorney General, Solicitors for John A. Knott et al., Cross-Appellees.

The opinion filed herein on the 14th day of June, 1907, is in words and figures as follows:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 3000.

THE WABASH RAILWAY COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, at Two o'clock p. m., June 14th, 1907.

Here are eighteen cases, in which all the railways of the State ask to file supplemental bills in equity in the eighteen cases, brought two years ago against the State officers to enjoin the enforcement of statutes of 1905 fixing rates. The charge was made that the rates were not remunerative but confiscatory, and therefore void by reason of the United States Constitution. Those cases were placed at issue and referred to a master. The evidence has been taken and the court is now advised that within a month or two the cases will be argued to the Master. So that after six months or more from now a final decree will be entered in this court. I do not speak of this delay in a spirit of complaint, or even criticism. I simply state the fact of delay. During the early part of this year the legislature of Missouri repealed part of the rate laws of 1905 complained of, enacted substitutes therefor and placed still other commodities under specific tariff rates, including passenger rates of two cents per mile.

Early in this week notices were given of an application to file supplementary bills, attacking the rates fixed in 1907, on the ground that such rates were confiscatory.

That this is a judicial question all informed people agree. That it is a question of gravity and almost supreme importance all recognize and by none more than by the courts. It involves the question of what are reasonable rates and how determined. It involves
313 the question of whether all the receipts for State business can be taken in their entirety, and if in the aggregate remunerative of whether the laws are valid. And it involves the question as to whether every person is entitled to have his product carried at reasonable rates instead of carrying some at unreasonably low rates and others at unreasonably high rates, and allowing the law to stand because the average is remunerative. And it involves the question of whether the State of Missouri is attempting to exercise the powers solely lodged in the Congress of the United States. And there may or may not be involved the question of which is the more powerful with reference to these rates, the nation or the state.

I express no opinion as to some of these questions, on some of which I have a conviction and on others I do not even have a tentative opinion. But they are all judicial questions, and for the

courts only, and in the end will be decided by the Supreme Court of the United States, a court in which every patriotic person has unbounded confidence. To that Court these questions in the end will go for decision.

As to whether these supplemental bills may be filed was set down for argument this morning at the opening of court. These rate statutes presumptively are valid, and if valid went into effect at midnight last night. Seeing the gravity of the situation, this court on yesterday, on its own motion, on inspecting the proposed supplemental bills, entered a restraining order, restraining the railways from carrying out the recent statute until the matters could be heard, as to filing the supplemental bills on which, if filed, a temporary injunction should issue. At the morning hour of this day, the Assistant Attorney General of the State appeared and stated that the Attorney General could not be here until tomorrow morning. It was also at that time made to appear that on the morning of this day suits were filed in the state courts at St. Louis and Kansas City, and a temporary mandatory injunction had been issued by the state courts, commanding the railways to recognize as valid and carry out the statute of 1907.

314 All courts, state and federal, recognize the delicacy of real or seeming conflicts between the courts. All courts recognize that all other courts act in good faith. And this court appreciates the situation. It is a question worthy of argument and deliberation.

When the foregoing situation was disclosed this morning counsel for the railways moved for a continuance for a week or ten days, to the end that the situation might be looked into. This motion will be overruled, and all these matters are set down for hearing at two o'clock to-morrow afternoon. These delays cannot be allowed. The interests of the public and the railways alike demand the speedy determination of all questions connected with the foregoing statements as well as all questions connected with the validity or invalidity of the rate statute recently enacted by the state legislature of Missouri. At the time named I shall expect counsel on both sides to be ready to proceed in argument, as well as to move for such other proceedings as may be deemed proper. All of which is so ordered.

315 On the 17th day of June, 1907, an Opinion was filed. Said Opinion is in words and figures as follows:

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and THE STATE RAILROAD COMMISSIONERS.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, Monday, June 17, 1907.

These cases were argued on Saturday and taken under advisement until this time. The situation is such that I must decide the ques-

tions today. Limited as the time has been, I have an abiding conviction of what should be done even if the reasons therefor may not be stated with the fullness that the importance of the matters requires. I have been much aided by the arguments, which were strong, eloquent and powerful, by counsel representing both sides, and as it seems to me, every phase of the questions was so illuminated by the arguments that all possible questions are at an end of debate.

The real question here is, has this court jurisdiction over the passenger fare law of 1907 of the Missouri Legislature by which it is declared that the legal fare be two cents per mile. A question connected with that is, whether the bills tendered are supplemental bills to those filed in the eighteen cases two years ago to enjoin the enforcement of the freight tariff law of 1905 now pending before the Master.

A supplemental bill usually is where there has been some change in the rights or status of the parties which must be carried forward by a supplemental bill. And usually when a supplemental bill is thus allowed, matters can be brought in which could have been covered by an amendment to the original bill. These discussions as to supplemental bills, as well as to other bills, are exceedingly technical. It seems to me that the test is not so much in the way a pleading is styled, as what the allegations of the pleading are.
316 Formerly, discussions as to various bills in equity gave rise to great delay, the results being that years and years would elapse before a chancery case could be concluded. Looking back at those old discussions, it now seems to have been a folly to thus waste the time and energies of the judges and of counsel in determining these technical questions. Such must have been the belief of the Supreme Court when a code of Rules in Equity *were* established, the purpose no doubt being to get rid of the old technicalities which served no useful purpose. By the adoption of the Rules in Equity, we have a system of fact pleading covering almost every phase of equity pleading and practice; and it is only when some question of practice is not covered by the rules, that we go back to see what the practice of the High Court of Chancery in England was, and then not as positive rules, but as furnishing just analogies. Rule 90 thus providing was adopted in the year 1842, and the Supreme Court has decided that when we go to the English Chancery practice, we must take the practice as it existed in England in 1842, when this rule was adopted. By Rule 57 it will be seen that the supplemental bill is allowed when any material event has happened after the filing of the original bill. In 1905 the Legislature of Missouri enacted a maximum freight tariff statute as to several commodities. The railways contested the validity of that statute in the eighteen actions above referred to, and these actions are still pending. By the act of 1907 the Legislature declared that all railways should charge but two cents per mile per passenger. It seems to me that this is an event happening since the institution of the original suits, and an event that is germane to the original controverted questions.

But I do not deem it of much importance to determine whether the pleadings tendered for filing are supplemental bills, or whether they are original bills.

On Tuesday, the 11th inst., the complainants gave notice of filing these bills on Friday, the 14th inst. On Thursday, the 13th inst., the railway companies asked leave to file them. Solely out of courtesy to the Attorney General, who was not then present, this was refused, but the Court on its own motion issued restraining orders to keep the matters in status quo. At the time fixed,
317 Friday the 14th inst., the matter was again delayed for a day at the request of the Attorney General, he still being absent. And on that day bills were filed in the state courts at Saint Louis and Kansas City, the purpose, being as it is said, to bring about the enforcement of this statute in question. And the argument now is, that as these cases were filed in the state courts on Friday the 14th inst., the day before the arguments were had in this court, that the same subject matter was pending in the state courts, and that the state courts would take jurisdiction to the exclusion of this court, the cases being there first pending. But the above statement of facts shows that the cases were pending in this court from Tuesday the 11th inst. and that orders were made on Thursday the 13th inst., the day before the cases were lodged in the state courts. If these matters could not be covered by supplemental, they could be covered by original bills, and they were presented prior to the institution of the cases in the state courts. It is not material whether these supplemental bills so-called are full and complete as original bills. Defects could be cured upon exceptions or demurrers, or by complainants on their own motion before the filing of an answer. Nor is it material whether these pleadings are filed in the original cases or separately docketed; because if separately docketed, they will at once for trial purposes be consolidated with the old cases pursuant to Section 921 of the Revised Statutes. And whether the contention of counsel for the state officers be technically correct or not, the contention is without substantial merit as to the rights of the parties. These pleadings should be filed and regarded as having been filed on Tuesday, the 11th inst.

The fixing of rates by the Legislature is presumptively correct and the Railway Companies have the burden of proof of showing that the statute is not remunerative. That the fixing of rates is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be discussed. The railways are entitled to cost and a reasonable profit, and no fair-minded man disputes it. How to arrive at the cost and a reasonable profit, is a most difficult problem. But if the statute is challenged, it must
318 be ascertained, and this ascertainment can only be by judicial proceedings, and must be determined by the courts, and ultimately by the Supreme Court of the United States. No skill of the draughtsman by the use of words or phrasing can take this question from the courts. It can never be settled in a criminal case by arresting ticket agents and conductors. The Supreme

Court in the end must have the evidence with the right to make the ultimate findings of fact. There is but one orderly and seemly way, and that is in equity with the right of appeal to the Supreme Court, as has been said by that court over and over again. All contentions that the courts of the state can decide these questions as well as can the United States Courts, is not a question for argument, because it is a question of jurisdiction, and in my judgment, in these cases this court has jurisdiction, and having jurisdiction the jurisdiction should be exercised.

There seems to be much feeling in the minds of many as to where these cases should be adjudicated, but why the feeling I do not understand. And yet I recall the historical facts that at various times since the organization of this government, the feeling has run high as to whether the federal or state courts should adjudicate matters of importance to the public. No one doubts that the states have a right to manage their own local affairs, and to have matters growing out of their own local affairs determined by their own courts. But it is too late to seriously complain because the United States Courts take and exercise jurisdiction under the constitutional provision providing for the courts, and the enactments thereunder. The United States Court, regardless of the citizenship of the parties, will take and exercise jurisdiction in actions of a civil nature when the provisions of the United States Constitution are invoked, as has been done in this case. The Constitution provides for this, and Congress has provided the procedure. The Commerce Clause of the United States Constitution has been invoked, as is the Fourteenth Amendment. These are national questions, and the Supreme Court will hold the scales of justice with the evidence before it, and why there should be any excitement or feeling about this, is beyond my comprehension. I do not know, and of course do not state, that the State Legislature has wronged these rail-
319 ways, because that is the question to be decided when deciding the merits of the case. The railways say that they are being wronged, and they should have a hearing, and the hearing should be on the evidence, and that evidence carried in the record to the Supreme Court. And if upon the evidence the railways are being compelled to transact business at a loss, no one ought to doubt but that the Supreme Court will hold the statute void. If the rates fixed are remunerative, no one ought to doubt but that the statute will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That question was fought out one hundred years ago, and from the organization of the Supreme Court down to the year 1888, being the period covering the first one hundred years of the United States Supreme Court, that court held twenty United States Statutes void. During the same period that court held one hundred and eighty-one state statutes void, of which fourteen were Missouri statutes. (See Appendix to Volume 131 U. S. Reports.) How many statutes have since been declared void by that court, I have not taken the time to ascertain. Some of the statutes thus declared void were railway rate statutes enacted by the states..

These questions are of the greatest importance. There are many complications arising. Much is to be considered besides the mere rates or fares. There must be equality of rates, the treatment and charging of all alike. No rebates; no discriminations must be allowed. Safety of the public, including passengers and employés, must be considered. And as of much importance as any other question, if not the greatest of all, is the question of efficient service. Rapid and prompt delivery of freight must be had. Fast passenger trains with but few stops, for passengers going a considerable distance, are demanded. Local trains for local passengers, are required. To have such efficient service, reasonable compensation must be paid. All these questions are involved in the fixing of rates. Between the cities of Saint Louis and Saint Joseph, one line of railway is wholly within the state, while another and competing line a part of the distance is within the state of Kansas. A like situation exists between Kansas City and Saint Joseph, and another like situation exists between Kansas City and Joplin. Possibly there are other like situations. In
320 the case of Hanley vs. R. R., 187 U. S., the Supreme Court decided that a railway connecting two points within the state, and doing business between the two points, but with a line outside of the state a part of the distance, was engaged in interstate commerce controllable only by enactments of Congress. What about the Missouri statute fixing rates over the one line wholly within the state as against a competing line a part of the distance outside of the state? I do not intimate the conclusion but that there is a question, can not be doubted. And if the statute is void in part, is it separable, leaving the valid parts to stand with the void parts eliminated? I simply mention these questions to show the gravity and importance of these cases without in the slightest degree intimating the conclusion, often discussed by men of great ability, but upon which as yet there has been no conclusion reached, so far as I know, by any of the courts.

It is urged with much plausibility that by reason of the case of Fitts vs. McGhee, 172 U. S., that because penalties are affixed to the Statute of 1907, that the criminal courts of the state only can take jurisdiction. I do not stop to review the various Missouri Statutes upon the subject of both passengers and freight, all of which must be considered as in pari materia; but it is sufficient to say that the inflicting of penalities is not the only remedy. The Attorney General and Railroad Commissioners still have much to do with the enforcement of these statutes which the railways contend are void in part. These matters were considered, and a conclusion reached adversely to the contention of the officers of Missouri, by the Supreme Court of the United States, sustaining Judge Philips when presiding in this court, and reversing the Supreme Court of Missouri. R. R. vs. Missouri R. R. Commissioners, 183 U. S. 53. As I understand in the original eighteen cases now pending in this court, the question was and is, whether all the earnings in the aggregate are remunerative. That theory being, I suppose, by reason of the case of Smythe vs. Ames, decided by the

Supreme Court, and the question is still present under the General Statutes of Missouri, the Statutes of 1905, and the Statute
321 of 1907 in question. The time is not far distant when the question will be raised, and possibly in these very cases, as to whether the statutes can stand, if some rates are too high, if the rates within the state in the aggregate are remunerative. The question will arise whether one person can have less than reasonable rates, and another be compelled to pay more than reasonable rates. Will it be a sufficient answer to say that in the aggregate the rates are remunerative? Or is that a question only between the individual and the railway company? Upon this question I intimate no ruling, but the importance of the question can not be overestimated.

These cases will be set down for hearing. The orders heretofore made will stand except as now modified. The two cent passenger fare statute should be put in force, and kept in force for some months with the rights of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with the two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared, after months of investigation, that in that state a two cent passenger fare would be confiscatory. Governor Hughes, by a recent veto message, so declared as against an enactment providing for the two cent fare in the populous state of New York. It may be that what will be reasonable rates in parts of Missouri on one line, will be unreasonable in another part of Missouri on another line. How can these questions be determined? Is it not at present all speculation and guesswork? Of what value will be the testimony of an ordinary business man testifying by way of opinion? And of what value will be the testimony of railway experts giving opinion and illustrating his opinions by the use of many figures? Experience over a reasonable period of time ought to, and no doubt will, settle these questions, at least for the time being, although what may be a reasonable remuneration one year, may be unremunerative five years hence. The Supreme Court of the United States in Smythe vs. Ames, referred to, took care of that question by keeping it open with the right to open up the case from time to time as circumstances required.

Therefore the orders will be that this court retains jurisdiction of these cases regardless of whether the pleadings tendered are
322 considered as supplemental bills or original bills, and no order will be made for some months with reference to the two cent fare statute, leaving it for the time being operative and as though in full force.

323 On the 17th day of June, 1907, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

THE WABASH RAILWAY COMPANY
vs.
HERBERT S. HADLEY, Attorney General, and Other State Officers.

And Seventeen Other Like Cases.

Remarks of Judge Smith McPherson, June 17th, 1907.

The real question here is, has this court jurisdiction over the passenger fare law of 1907 of the Missouri legislature declaring it unlawful to charge more than two cents per mile? A lesser question is whether the bills tendered for filing are supplemental bills to those filed in this court in the eighteen cases two years ago and now pending before Mr. Schofield, the Master.

I fully appreciate the responsibility resting upon me and the consequences to follow from the orders now to be made. If mistaken the mistakes are mine, even though I have had but part of one day since the argument to reach these conclusions. Never has a case before me been argued with greater eloquence, logic and power than was done by counsel for the state officers and for the eighteen railways. Every phase of the case direct and collateral has been so illuminated that all possible questions are at the end of debate. What is the supplemental bill in equity. And wherein is the importance of defining it? Usually it is where there has been some change in the rights of the parties, which must be carried forward by a supplemental bill. One hundred and more years ago judges who had but little to do except play the role of mental acrobats and seek to refine and distinguish and to display an affected learning, and to discuss most gravely "the difference betwixt the west and northwest side of a hair" most elaborately set forth their views as to original bills and amended bills and supplemental bills, and bills of review, and bills in the nature of bills of review. The result was that a chancery case lasted for
324 many years. More than fifty years ago the Supreme Court recognized the folly of much of this, and by a code of rules adopted the system of fact pleading and left the old chancery practice in force only when the 94 rules adopted did not meet the situation that might arise, and by rule 57 defined a supplemental bill. But that is not important in my judgment. Whether this proceeding should be by original bill, or by supplemental bill is of small consequence. If by original bill, the railways had the right to file the same without notice, and the right to a restraining order without notice. If by supplemental bill the usual practice is to require notice. And in either case it is discretionary with the judge to allow a restraining order without notice until a hearing can be had on notice as to a temporary injunction. On Tuesday the 11st instant, the complainants gave notice of filing these bills on Friday the 14th instant. On Thursday they asked to file them. Solely out of cour-

tesy to the Attorney General, who was not present, this was refused; but the court on its own motion issued the restraining order, to keep the matter in statu quo. At the time fixed for the hearing the matter was again delayed for a day at the request of the Attorney General, he unavoidably being absent. During that delay the bills were filed in the State courts. For this there is no criticism. But I have stated the facts, and the statement of facts shows that these cases, as to the laws of 1907, were pending and had been pending since Tuesday the 11th instant. And these bills must be considered as filed as of that date. And whether defective as original bills is not material, because such defects can be corrected on demurrer or exceptions, or by the complainant before answer as of course. Nor is it material whether filed in the original cases or separately docketed. If separately docketed, they will at once for trial purposes be consolidated with the old cases, pursuant to Section 921 of the Revised Statutes. If the contention of counsel for the state officers be technically correct, it is without substantial merit as to the rights of the parties.

That the fixing of rates by the legislature is presumptively correct, all concede. That it is a legislative act, all agree. But that such rates must be reasonably remunerative, cannot longer be
325 discussed. The railways are entitled to cost and a reasonable profit, and no fair minded man disputes it. How to arrive at the cost and reasonable profit is a most difficult problem. But it must be ascertained and this ascertainment can only be by judicial proceedings, and to be determined only by the courts and ultimately by the Supreme Court of the United States. No skill of the draftsman by the use of words or phrasing can take that from the courts to the town meeting. It cannot be changed by declamation, either sophormoric or by invective. It can never be settled in a criminal case by arresting ticket agents or conductors. The Supreme Court in the end must have the evidence, with the right to make the ultimate findings of fact. No local tribunal, Federal or State, can foreclose the fact as would be done if the case goes to the Supreme Court on writ of error to the State courts, and from the State courts there is no method of review but by writ of error. There is but one orderly and seemly way, and that is in equity, with the right of appeal to the Supreme Court as has been said by that court over and over again. The argument that the courts of the State can decide as to the validity of the laws of the State as well as can the United States courts will not be argued by any Federal judge, but will be conceded. Those courts are as high minded and as learned as are the Federal courts, but that is not the question. It is a question of jurisdiction. And this court has jurisdiction and will maintain its jurisdiction. Nor is this to the prejudice of anyone. As I listened on Saturday to the argument, I was carried back to the days of 1801-9. I recalled the judicial revolutions of Virginia and Pennsylvania. I recalled the case of Luther v. Borden, growing out of the Dorr Rebellion. I recalled the bitterness of half a century ago between Iowa and Missouri over the state line. I recalled the recent Lives of Thomas H. Benton and Gouvernor Morris by a distinguished author who states that at one time or another every one of the original

thirteen states has tried in some form or other to destroy this government. And I recalled that in every instance, save the troubles of 1861-5, that the United States Courts have, in a dignified way, settled the disputes and law-abiding people acquiesced and the lawless element were compelled to submit.

326 That the States have the right to manage their own local affairs will ever be maintained. But it is too late to talk about states dictating to the Government, or to riding down its courts. This is a Nation. Its commerce will not be interfered with by any State, because for that almost alone we adopted our Constitution. The Commerce Clause will always be upheld, and the rights of the citizen, including corporations, will ever be protected in their just rights under the Fourteenth Amendment. These are National questions, and the Supreme Court will hold the scales of justice with the evidence before them. I do not know and of course do not state that the State legislature has wronged these railways. That is the case on its merits. But the railways say they are being wronged, and they must have a hearing, and a hearing on the evidence, and that evidence carried with the record to the Supreme Court. And if upon the evidence they are being compelled to transact business at a loss, no one need doubt but that the Supreme Court will nullify the statute. If the rates fixed are remunerative, the statutes will be upheld. It is too late to talk about the alleged wrongs of the Supreme Court declaring statutes void. That was fought out one hundred years ago. Down to 1888 the period covering the first 100 years of the United States Supreme Court, that court held twenty United States statutes void. During the same period that court declared as void 181 state statutes, of which 14 were Missouri statutes. (See Appendix to Vol. 131 U. S. Rep.) How many have since been declared void I have not taken the time to ascertain. And some of the statutes thus declared void were railway rate statutes, enacted by the states. It must be remembered that in passenger and freight carrying there is much to be considered besides rates or fares. Important as any, if not the most important, is the equality of rates; the treatment and charging of all alike. No rebates; no discriminations, must be allowed. Safety of the public, including passengers, and employés, must be considered. And of as much importance as any other question is efficient services. Rapid and prompt delivery of freight must be had.

327 Fast passenger trains, with but few stops, for passengers going a considerable distance, is demanded. Local trains for local business is required. To have these reasonable compensation must be paid. So that these questions are all involved. And in consequence such business as is between St. Louis and St. Joseph, Kansas City and St. Joseph, Kansas City and Joplin, and perhaps other points, where parts of the routes of some of the lines are out of the State, a grave question is presented, and no small question is covered whether parts of these statutes are void that the matter can be separated and the balance of the statute remain in force, because Congress, even is to those lines wholly within the state, may or may not have control of such commerce when it directly interferes with commerce passing out of and back into the state. I neither pass upon

this question nor express an opinion thereon, because while such questions have frequently been discussed by the ablest of men, such questions have not yet been decided. I simply mention it as a great National question.

It is urged with much plausibility that because penalties are affixed to the statutes of 1907 that the original courts of the state only take jurisdiction. I do not stop to review the various Missouri statutes upon the subject of both passengers and freight, all of which must be construed as in pari materia. But it is sufficient to say that the inflicting of penalties is not the only remedy. The Attorney General and Railroad Commissioners still have much to do with the enforcement of these statutes which the railways contend are void in part. In the original cases the question was whether all the earnings in the aggregate were remunerative. That question is still present under the statutes of 1907. Whether these laws by raising the freight rates and lowering the passenger fares are remunerative in the aggregate must be considered by the court. The State is not in effect a party, because the charge is that these officers are seeking to enforce void statutes, in more ways than by inflicting penalties.

The orders heretofore made will stand until vacated or modified. The cases will be set down for hearing as to whether a temporary injunction shall issue, and if issued what shall be the scope?
328 shall they restrain the enforcement of the recent freight rate statute? Shall they restrain the enforcement of the recent two cent passenger rate statute? Tentatively, subject to argument, and subject to change of opinion, if I should hear the cases, my present view is that the two cent passenger fare statute should be put in force and kept in force for some months at least, with the right of the railways later on to renew their motions to enjoin the enforcement of the statute. One class of people claim that with a two cent fare travel will so increase as to make it remunerative. Others deny this. The Wisconsin Commission but lately declared after months of investigation that in that State a two cent fare would be confiscatory; and Gov. Hughes by a recent veto message so declared in the populous state of New York. How is this question to be determined? Is it not all speculation and guess work? Of what value will be the testimony of an ordinary business man? And of what value will be the testimony of railway experts?

Such are my present views, hurriedly stated and without time to place them in the shape of a formal opinion. Nor would it be of substantial benefit to anyone to review the many authorities. They are known to the profession and to the courts. But I have stated what the law is as I understand it to be.

329 On the 31st day of March, 1908, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States in the Western District of Missouri.

No. 2988.

THE SAINT LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General and Others, Defendants.

And Seventeen Other Like Cases, Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3004, 3005, 3006.

Frank Hagerman and others for Complainants.
Herbert S. Hadley, Attorney General.
John Kennish, Assistant Attorney General.
F. W. Lehmann and S. B. Ladd, for Defendants.

Opinion.

SMITH MCPHERSON, *Judge:*

Here are eighteen cases, brought by as many railway companies of the state, against the Attorney General, Railroad Commissioners of the State, County Judges, County Treasurer and shippers.

The purpose of the bill in each case, is to enjoin the enforcement of state railway rate statutes on the ground that the rates thus fixed by legislative enactment, are not remunerative, but are confiscatory. The original bill of complaint in each case was filed in 1905 assailing an Act approved April 15, 1905 fixing rates. In June of that year temporary injunctions were issued. In December of that year answers were filed, and on defendant's motion the cases were referred to a Special Master before whom the cases are still pending.

That statute was enacted in lieu of certain sections of the Revised Statutes of the State.

330 In 1907 the Legislature enacted a statute which was approved March 19, 1907. This statute after referring to the one of 1905, declared that the same

"be and hereby are repealed, and the following to be known as sections 1194, 1194-*a*1, 1194 *b*-1, and 1194 *c*1 of said Revised Statutes, are enacted in lieu thereof."

Then follow four sections designated as above.

By still another statute passenger fares were fixed at two cents per mile, theretofore three cents per mile.

In June 1907 each company filed another bill, concerning which see the opinion by this Court in this case in 155 Federal Reporter 220. Since that time the cases have been pending before the Master, the delay occasioned in part at least by an awaiting of a decision of the Supreme Court in what are known as the Minnesota and North Carolina cases. This Court declined to grant a temporary injunction

as to the passenger rates, but granted such writ as to the freight rates. Both statutes of 1907 provide for penalties for a violation of the enactment, and expressly recite that any liability or penalty incurred under the statute of 1905 may still be enforced. It is now claimed that the original cases are at an end because the statute of 1905 has been repealed. The Court cannot so hold. As has been noticed for the statute when repealed, there was a substitute enacted. One rate was cut out and another fixed, with the penalties under the prior statute remaining. This does not overthrow the original cases. They are rightfully pending with part of the subject matter still in existence, and a new alleged grievance in place of the old. This new grievance, if one, should be brought forward by a supplemental bill, that being the office of such a bill.

Two shippers on each road are made defendants. That it is proper to make them parties cannot be in doubt, as they have a direct interest. Whether a decree herein will be binding on other shippers, is a question not now for decision. And that the County Judges and Prosecutors have to do with these laws is plain. But these matters are exceedingly technical. The real question as to parties,
331 is as to making the Railroad Commissioners and Attorney General parties defendant. As to the right to make the Attorney General and the Commissioners parties defendant, is a question that has been argued for and against with much earnestness and by the citation of many authorities.

At common law the office of Attorney General was the highest law office of the Crown. He represented the Crown in all legal matters and was the responsible officer as to the legal duties and prerogatives, appearing in the courts of record and the House of Lords in all matters affecting the public, to the end that justice might be done in the name of the King. The duties of that office are not less in this country, and the specific mention of many things that he must do in behalf of the public and the State are not to be regarded as exclusive in the full performance of his duties.

The Constitution and Statutes of Missouri make special mention of many things that he is required to do. He is upon a salary, and cannot receive fees. He is a member of the State Board of Equalization and of Education, as well as other Boards. He prosecutes suits on official bonds. He prosecutes railroads for refusing to grant proper rates to shippers. He must appear before the Interstate Commerce Commission when residents of the state are being wronged. He asks for, and receives, the aid of additional counsel. He sees to the enforcement of the banking laws, and proceeds against express companies and railroad companies and looks after forfeitures. These and a great many other things he is specifically required to do. And the importance and dignity of his office are such, that in most instances he is relieved from making oath to papers that he is permitted or required to file. And then out of apprehension that because certain things are specifically mentioned, that the conclusion would be arrived at by construction that all other matters were excluded, Section 4943 of the Revised Statutes was adopted, requiring that officer to institute and prosecute all suits and other proceedings

and in equity requisite or necessary to protect the rights and interests of the state and to enforce any and all rights, interests or claims of the state against any and all persons and corporations.

It would seem that from the foregoing there could be no doubt but that it is the duty of the Attorney General to enforce the statutes in question presented by these cases, if valid, not only by virtue of the duties pertaining to that office by common law, but as well by the statutes just alluded to.

But there is a further statute which counsel on both sides have overlooked. Chapter 1 of the Laws of 1907 by Section 61 thereof eliminates all doubt by appropriating twenty thousand dollars per year to be drawn by the Attorney General from time to time

"which said sum shall be expended under the direction of the attorney general in the prosecution or defense of suits heretofore brought, or that may hereafter be brought by or against any railroad company, wherein the validity of any act of the general assembly may become involved or contested."

It will be noticed that this appropriation of this large sum of money is made not only to the end that the attorney general may seek to maintain the validity of any statute brought in question by any case here after brought, but likewise covers cases heretofore brought. And in the light of that section appropriating forty thousand dollars for the biennial period of two years, to be drawn by the Attorney General and expended under his direction, leaves no room for argument that it is the duty of the Attorney General to enforce all statutes enacted by the General Assembly and see to it to the best of his ability that no court by decree or judgment holds the enactments void.

Without scheduling the different statutes, the duties of the Commissioners are likewise plain. They are vested with authority to fix rates, and should the statutes in question be overthrown as being void, they will at once fix some other rate in their judgment valid. The question as to making the Commissioners parties defendant has been put at rest by the case of the Commissioners vs. R. R. 183 U. S. 53.

Again, as when the cases were brought, and first argued, it is urged that the state in effect is being sued in violation of the Eleventh Amendment, and the question has again been argued with force, logic and eloquence. That a determined effort has been made by the use of words, phrasing and forms within the past two years, regardless of substance, effect and meaning, by the states to deprive the United States Courts of jurisdiction vested by the Constitution and laws enacted by Congress, is known by all. The argument is to the effect that all litigation of and concerning the fairness, and validity as well, of state statutes shall be in the courts of the state whose legislation is assailed, leaving the right and the only right of carrying questions of law to the United States Supreme Court by writ of error, but likewise insisting that in cases as to the reasonableness of rates, dependent wholly upon facts, that a writ of error shall be unavailing, and that the state courts of the state whose state legislation is assailed, shall alone and finally decide

the case. And that this will be so in a chancery case as well as in an action at law by the only remedy, by writ of error to a State Supreme Court, when the case depends upon questions of fact, has been held by the Supreme Court in Egan vs. Hart, 165 U. S. 188. There are others who believe that all matters both of fact and law arising under the Constitution of the United States should in the end be decided by the only court created for that purpose. So it is that a sharp conflict is presented. Almost from the beginning of our government this question at short recurrent periods has arisen, but generally concluded by the Supreme Court holding that this is a National government with a National Judiciary, and that the National Constitution is and shall forever remain the supreme law of the land, anything in the laws of any state to the contrary notwithstanding. When our government was organized, every of the thirteen states was in debt, and some of them well nigh hopelessly so. In and out of both the National and State Conventions the arguments were for and against whether a state could be sued in a National Court. Hamilton and Marshall and Madison said it could not be done. Patrick Henry with his numerous doubts and opposition was filed with fear. Others like James Wilson and Edmund Randolph said the state would and ought to be suable by a citizen of another state for wrongs done.

Near the end of Washington's first term, the famous suit of
334 Chisholm vs. Georgia was decided, the holding being that Chisholm, a citizen of South Carolina, could recover judgment for money that the State of Georgia justly owed him.

It is said that within two days from that decision, a resolution was offered in the Senate to amend the Constitution to prevent such suits, by declaring that the Judicial power shall not extend to any suit against a state by a citizen of another state. But that failed because it was urged that notwithstanding the decision in the Chisholm case, such jurisdiction had never extended nor existed. Thereupon new phrasing was adopted, and a new resolution was offered, reciting that "The judicial power of the United States shall not be construed to extend to, etc.," shortly ripening into the Eleventh Amendment. The only purpose of that Amendment was to prevent a state *b*rom being sued by its creditors, and history furnishes the proofs conclusive of the correctness of the statement. Those who are doubtful of this need only read what Chief Justice Marshall said in Cohens vs. Virginia, (6 Wheaton.)

At common law from time immemorial, a public officer was not allowed to justify under a void law or void order, but was compelled to make restitution of the property taken or to pay damages therefor. And such has been the uniform holdings in this country, and for the reasons that a void statute or void order is utterly without effect and is wholly unavailing as a defense. Such has been and is the law of England, and such has been and is the law of this country. And why such should not be the law on the equity side of the docket by preventative remedies against threatened wrongs, is difficult to conceive.

But the Supreme Court has held in the cases of In Re Ayres, 123 U. S. 443, and Fitts vs. McGhee, 172 U. S. 516, that in cases wherein

the state as a state is affected, that a suit against the officers is in effect one against the state in contravention of the Eleventh Amendment. It is to be noted that both the cases above referred to would have been decided as they were decided, if taken to the Supreme Court by writ of error to a State Supreme Court, or by appeal from a Circuit Court, if the Eleventh Amendment had never been adopted.

This is so because in the Ayres case a full adequate and com-
335 plete remedy at law existed, and in the case of Fitts vs. McGhee the sole purpose was to enjoin criminal proceedings. But it is now too late to object to the jurisdiction of a Circuit Court to enjoin the enforcement of a rate statute alleged to be void because confiscatory, although concededly the holdings now are that the test is not whether the state is a party to the record by name, but is the state in effect a party?

But in the case at bar the state as a state has no interest. And the state as a state is not attempting to confiscate property. It is the government of the state, first by its legislature, and then by its officers, who, according to the allegations of the railways, are attempting to confiscate property. Whether such acts will amount to confiscation if carried out, relate to the case on its merits. But the point to the whole matter is, that the state is not seeking to act, and no effort is made to enjoin the state, either by name or in effect. And this distinction is not metaphysical, but is a substantial distinction, clearly and unmistakably pointed out by Justice Matthews in Poindexter vs. Greenhorn, 114 U. S. 270, 290, wherein he said:

"In the discussion of such questions, the distinction between the government of a State and the State itself is important, and should be observed. In common speech and common apprehension they are usually regarded as identical; and as ordinarily the acts of the government are the acts of the State, because within the limits of the delegation of power, the government of the state is generally confounded with the State itself, and often the former is meant when the latter is mentioned. The State itself is an ideal person, intangible, invisible, immutable. The government is an agent, and within the sphere of the agency, a perfect representative, but outside of that, it is a lawless usurpation. The Constitution of the State is the limit of the authority of its government, and both government and state are subject to the supremacy of the Constitution of the United States, and of the laws made in pursuance thereof. So that, while it is true in respect to the government of a State, as was said in Langford vs. United States, 101 U. S. 341, that the maxim, that the king can do

no wrong, has no place in our system of government; yet, it
336 is also true, in respect to the State itself, that whatever wrong is attempted in its name is imputable to its government, and not to the State, for it can speak and act only by law, whatever it does say and do must be lawful. That which, therefore, is unlawful because made so by the supreme law, the Constitution of the United States, is not the word or deed of the State, but it is the mere wrong or trespass of these individual persons who falsely speak and act in its name."

So that it follows that the State of Missouri is not a party either by

name, nor in effect. And this Court has jurisdiction both of the subject matter and of the parties, to inquire into the questions in the case, and on a final hearing decree whether the rates fixed by statutes are remunerative or confiscatory.

On what basis the Master shall report, is not clear. Every person whether a passenger or shipper, is entitled to have efficient service at reasonable rates, which the company must give for such compensation. Whether such charges for every person can be fixed by a decree, is doubtful, and in any event will be attended with much difficulty. But if all earnings in the state for state business are to be taken in the aggregate, less expenses, the question is attended with difficulties, because of the matter of expense, it being difficult to apportion the expenses between the state and interstate business.

If the parties cannot agree, the Master should be directed by a supplemental order.

These cases should be brought to a final decree, and that decree such as can be carried to the Supreme Court for final determination, and not for a reversal because of an error of the Master or the Court in determining the expenses. What would be still more to the point would be for the Master to determine the expenses from the standpoint of both the railway company and the Attorney General. And there is no valid reason why the cases should not be brought to a conclusion within the next ninety days. And if this is not done, the delay will not be chargeable to the Court.

337 This memorandum opinion was written many weeks since, but withheld by request, awaiting the decisions of the Supreme Court in the Minnesota and North Carolina cases. Those cases were decided on the twenty-third instant, adversely to the State officers. And it is deemed unnecessary to await the opinion, which this Court has not yet seen.

Kansas City, Missouri, March 31, 1908.

338 On the 8th day of March, 1909, an Opinion was filed. Said Opinion is in words and figures as follows:—

In the Circuit Court of the United States, Western District of Missouri, at Kansas City.

No. 2988.

THE ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, Attorney General of the State of Missouri; Joseph P. Rice, John A. Knott, and Frank A. Wightman, Railroad Commissioners of the State of Missouri, et al., Defendants.

And Seventeen Other Like Cases, Being Numbered 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Mr. Frank Hagerman for each and all of said Eighteen Railroad Companies.

Mr. Herbert S. Hadley, Attorney General, Mr. John Kennish, Assistant Attorney General, Mr. S. B. Ladd, and Mr. Frederick W. Lehmann, for all defendants, in all of said cases.

With Mr. Hagerman the following appeared for the railroads as designated:

Mr. W. F. Evans for St. L. & S. F. R. R. Co.
Mr. M. A. Low for C. R. I. & P. Ry. Co.
Mr. M. A. Low for St. L. K. C. & C. Ry. Co.
Mr. O. M. Spencer for C. B. & Q. R. R. Co.
Mr. J. G. Trimble for Q. O. & K. C. R. R. Co.
Mr. Gardiner Lathrop for A. T. & S. F. R. R. Co.
Mr. S. W. Moore for K. C. & S. Ry. Co.
Mr. Geo. P. B. Jackson for M. K. & T. R. R. Co.
Mr. J. L. Minnis for Wabash R. R. Co.
Mr. R. A. Brown for St. J. & G. I. Ry. Co.
Mr. E. L. Scarritt for C. & A. R. R. Co.
339 Mr. John H. Lucas for K. C. C. & S. Ry. Co.
Mr. M. L. Clardy for Mo. Pac. R. R. Co. and St. L. I. M. & S. R. R. Co.
Mr. J. D. Hostetter for St. L. & H. Ry. Co.
Mr. S. H. West for St. L. S. W. Ry. Co.

Opinion.

SMITH MCPHERSON, *Judge:*

1. Each of the eighteen railroad companies is doing a general railroad business within the State of Missouri, all but one doing both state and an interstate business. Under the general railroad statutes of the state, the railroads were classified under three classes, the one class being allowed to charge for passenger rates three cents per mile, and the other two classes, four cents per mile. Freights likewise were classified with certain maximum rates. The Railroad Commissioners

of the state were authorized to fix and establish rates not in excess, however, of these maximum rates fixed by statute.

In the year 1905 the Legislature of the state by statute which took effect June 16th, 1905, provided for certain maximum charges. On the day the statute took effect each of the railroad companies filed their bills of complaint herein against the Attorney General and Railroad Commissioners, asking that they be enjoined from enforcing the statute upon the ground that the rates thus fixed were not remunerative, resulting, as is alleged, in the taking of their property without compensation. A restraining order in each case was issued, and within a few days thereafter upon notice and full hearing, a temporary writ of injunction as prayed was issued. Several months thereafter the cases were referred to a Special Master to take evidence and make his findings of fact and report the same to the Court.

In 1907 the Legislature of the state repealed the statute of 1905 and enacted a substitute therefor, which act was to take effect in June, 1907. On or about the day the statute was to take effect, each of the complainants filed its amended and supplemental bill setting forth the pendency of the actions and the action theretofore
340 taken by the Court therein, and asking that the enforcement of the statutes, one of which fixes certain maximum freight rates, and the other, passenger rates of two cents a mile, be enjoined on the ground that such rates were not remunerative, but confiscatory, and if enforced, would be taking the property of the railroad companies, without compensation. At or about the same time the state officers instituted proceedings in certain State Courts of Missouri against the railroad companies asking for an order that said two statutes of 1907 be enforced.

The Attorney General and his associates insisted that an entirely new situation was presented and insisted that the proceedings were instituted in the State Courts in advance of filing the Supplemental bills herein, and insisted that the State Courts had first acquired jurisdiction of the subject matter which would be to the exclusion of any action of this Court. The railroad companies insisted that the general subject matter was covered by the original bills of complaint and defendants' answers thereto, and that the statutes of 1907 should be carried forward by supplemental bill. It was likewise most earnestly contended that the actions in this Court were in effect against the State of Missouri in contravention of the Eleventh Amendment to the Constitution of the United States. But this Court after the fullest argument and consideration adjudged that this Court was not seeking to take jurisdiction against the State of Missouri as a state, and that the very office and nature of the supplemental bill as recognized from time immemorial by the equity practice required this Court to take cognizance of the supplemental bills and proceed with the litigation. (161 Fed. 419.)

In June last by agreement of parties, the Court revoked the previous order of reference to the Special Master and directed him to return to this Court the evidence he had already taken, and ordered that the case be tried upon oral testimony and such documentary evidence as the respective parties might offer. The evidence has been

concluded, and the cases have been fully argued, and are now for final decree.

341 2. Many believe that the better and safer practice would be to confine all litigation to the State Courts wherein is involved the validity of rates to be observed by railroads and other public utilities when such rates are fixed by ordinances of a city or statutes of a state. It is insisted that this would be more deferential and more in a spirit of comity to first allow the State Courts to pass upon such questions. It is urged that the decree of a State Court could be carried to the Supreme Court of the United States for final decision.

This is plausible and convincing to men who have not thoroughly considered the question. It is plausible, because such a course can be followed. But every thoughtful and patriotic man well knows and believes in the proposition that the Supreme Court of the United States should ultimately pass upon all questions arising under the Constitution of the United States. And the question whether rates thus fixed by ordinance or statute are confiscatory or remunerative, is one arising under the Constitution of the United States, and that question is wholly a question of fact, and is not longer an open question as to the law. This being so, the question cannot be passed upon by the Supreme Court of the United States on these questions of fact when there is a conflict in the testimony. Section 709 of the Revised Statutes of the United States is the only authority for taking a case from the highest court of a state to the Supreme Court of the United States, and the procedure thereby allowed is by writ of error. And the office of a writ of error is to authorize an appellate court to review questions of law and not to review questions of fact. So that when a case goes from the Supreme Court of a state to the Supreme Court of the United States, it can only go by writ of error, and the Supreme Court of the United States necessarily must take all questions of fact as being foreclosed by the State Courts. Therefore, when the case is wholly dependent on controverted questions of fact, it is utterly useless to carry the case to the United States Supreme Court fro[illegible]e decision of the State Courts, as an affirmance necessarily will be ordered, and the question as to whether the United

342 States Constitution is being trampled down cannot be considered. There is no other method of reviewing the decision of the State Court by the Supreme Court of the United States than by writ of error, and this is so in chancery cases as well as in actions at law.

State Corporation Com. of Va. v. Atlantic Coast Line Co., recently decided by the Supreme Court of the U. S.
Bement v. National Harrow Co., 186 U. S. 70, 83.
Dower v. Richards, 151 U. S. 658, 666.
Egan v. Hart, 165 U. S. 188.
Adams v. Church, 193 U. S. 510.
Chrisman v. Miller, 197 U. S. 313, 319.

It follows that all efforts to enforce the trial of such questions in State Courts would result, if successful, in having the State Court finally determine when the National Constitution as the supreme law

of the land, shall be applied. The Supreme Court of the United States is the tribunal to finally determine all questions, including those of fact, wherein the National Constitution is involved.

3. Upon their face the statutes in question are with reference only to state commerce. But it is urged that they are void because in effect they directly have to do with interstate commerce. The facts are as follows:

Between Kansas City and the Joplin mining district there are three lines of railway. The Missouri Pacific between these points is wholly within the state, and the other two, partly within and partly without the state, and therefore between the two Missouri cities of Kansas City and Joplin, are doing an interstate business under the decision of Hanley v. R. R. (187 U. S. 617). The same situation exists between the cities of St. Joseph and Kansas City, two of the roads being wholly within the State between the two points, and two partly within and partly without.

And between the cities of St. Joseph and St. Louis such situation is emphasized, the Burlington road being wholly within the
343 state between the two cities, and the Missouri Pacific a part of the distance being within the State of Kansas. The facts are that when the Missouri statutes lowered the passenger rates on the roads wholly within the State between said points, the interstate roads between said points were compelled by competition to lower their rates to correspond with the state rates thus fixed by statute. By reason thereof the argument is that the Missouri statutory rates control the interstate rates between the cities named, and therefore are void as being in conflict with the Commerce Clause of the National Constitution.

During the period of railroad building, for a time the western termini were at the Mississippi River. By reason thereof, and by reason of competition on account of river transportation, the railways fixed rates from the East to that river. After a time roads were completed to the Missouri river. Rates to points on that river were fixed on rates to the Mississippi River, plus rates between the two rivers. Andfor thirty years or more rates have been thus fixed. And as the Missouri statutes lower the rates between the two rivers, the argument is that the statutes lower the interstate rates from the East to Missouri River points, and to points to the West.

This presents a great question, and one which is far reaching, and in importance cannot be overstated. In the great case of Ex parte Young (209 U. S. 123), decided but last year, the Supreme Court in its majority opinion in speaking of this, said: "The question is not, at any rate, frivolous." But the point was not decided. But here the question is fairly and sharply presented for decision, with no precedents directly in point.

From the date of the Confederacy to the present time there have been clashings between the National Government and the States, owing, in part to the ever changing trade and commerce, and in part to the different schools of belief as to our system of government. And the pendulum will ever move back and forth. Even those who most strongly denounce the Kentucky Resolutions, and the doctrine

of nullification, are often the first to forget that they believe in not only the express but the implied powers of our government as taught by Marshall in McCullough v. Maryland (4 Wheaton), and that this government is one of the whole people. Such as thus believe
344 are often the first to advocate and rush through in the form of state regulation, measures for their own state, regardless of the rights of the people of other states. Neither the Ohio River, nor any other boundary has been the dividing line. Many of the cases in which state statutes have been declared void by the Supreme Court are statutes requiring a license to sell imported goods; imposing a tax on bills of lading for gold carried out of the state; imposing taxes on alien passengers; imposing taxes on passengers and merchandise carried into or out of the state; taxing drummers; regulating telegrams sent to other states; taxing those who use wharves; requiring inspection of animals for slaughter; and other like statutes in principle. All such statutes have gone down by reason of the Commerce Clause, and the uniform holdings of the Supreme Court.

The Commerce Clause gives Congress the power to regulate commerce:

1. With foreign nations;
2. Among the several states;
3. With the Indian tribes.

As to the first and last no doubt Congress can not only regulate but can prohibit. It is another proposition whether commerce can be prohibited among the states.

One of the methods resorted to for the construction of Constitutional provisions, as well as of statutes, is to ascertain the then existing evils. We find that New York and other sea coast states placed burdens on commerce from inland points to sea coast points and across such states for shipment by water. It was burdens on commerce that the inland localities complained of, and that such burdens should not be imposed, was the reason for adopting the Commerce Clause. If there had been no such burdens, it is likely that there would have been no Commerce Clause, and possibly no Constitution. I have searched diligently, but find no case decided by the Supreme Court declaring a State statute void that did not in some form and in some manner place a burden on, or in some way hamper or obstruct, commerce from or to another state.

345 The case of Louisville & Nashville R. R. v. Eubank, (184 U. S. 27,) comes more nearly sustaining the proposition that the Statutes of Missouri impinge upon the Commerce Clause than any other case that I recall. There the State of Kentucky by its Constitution provided that more should not be charged for a short than a long haul. The company had rates in force from Nashville, Tennessee, to Louisville, Kentucky, which were less than was being charged from points in southern Kentucky to Louisville. This was held by the Court of Appeals of Kentucky to be in violation of the State Constitution. So that we have a case of a state law, with the decision of the State Courts read into it, providing that more shall not be charged for a short haul wholly within the state, than for a long haul partly without the state. This must be so, because the same

provision of the Kentucky Constitution when applied to places all within the state was upheld by the Supreme Court, as will appear from the case of Louisville & Nashville R. R. v. Kentucky, 183 U. S. 503.

And the case of Wabash &c., R. R. v. Illinois, 118 U. S. 557, was decided in like manner, because and for the only reason that the Supreme Court of Illinois had so ruled as to read into the statute the objectionable feature.

But the Missouri Courts have not so construed these statutes of the state. When they do so decide, then the Eubank, and Illinois cases will be the precedents to thwart such legislation as thus construed. In the meantime there is no belief that the Missouri Courts will so decide.

The case of Hall v. De Cuir, 95 U. S. 485, is cited by counsel for the railways. Louisiana had a statute requiring carriers to receive and carry passengers without distinction on account of race or color. The steamboat in question plied between New Orleans and Vicksburg, doing both a state and an interstate business. The vessel was duly enrolled and licensed for the coasting trade. The boat had an upper and lower cabin, the upper for white people, and the lower for colored persons. The plaintiff De Cuir was a colored woman, and took passage at a landing in Louisiana for another landing in that state. Being refused admission to the upper cabin solely because she was colored, she was awarded damages in a State trial court,
346 which judgment was affirmed by the State Supreme Court. The Supreme Court of the United States reversed the judgment. Two reasons were given for the reversal, the one by Justice Clifford on the ground that navigation of the Mississippi River is wholly within the control of Congress. The other opinion was by the Chief Justice, who grounded his opinion upon the proposition that with the objections of most people to associating and rooming with colored persons, that to allow a colored woman to be carried in the first cabin, even though but for a ride within the state, would drive white passengers seeking an interstate ride from the boat. Or, as I have hereinbefore stated the statute in effect placed a burden on the interstate business. After discussing the question, and the many and great difficulties in applying the Commerce Clause, the Chief Justice said:

"But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom does encroach upon the exclusive power of Congress."

The State statute in order to be declared void, must by its terms and recitals interfere directly with commerce to or from another state, or the statute by construction given it by the highest court of the state must so operate in its results. But here we have no such recitals in the statute, and it has not been so declared to mean by the Missouri Courts. And while counsel for the railways do not in terms so insist, they in effect urge that the laws of political economy, custom and convenience shall act as a substitute for Missouri statutes, and the decrees of the Missouri Supreme Court. In other

words, they in effect, and I believe in language insist that the rules formulated a third of a century ago for making rates first to the one river, and then between the two rivers, and the laws of competition, shall be regarded as the equivalent of statutory law. I am mindful that it is believed by many that do not recognize these laws of trade, will impair if not destroy the great cities like St. Joseph, Kansas City and St. Louis. I am mindful of the fact
347 that between the two rivers the distance by the Burlington is but 198 miles, with other roads 300 miles or more, and that the shorter road necessarily fixes the rates between all points on the rivers. But competition does that, and the statutes are silent. The statute may or may not be unfair. I am considering the Commerce Clause as to its bearing on statutory enactments, and am not forgetting that many valid statutes are unfair, and some even unrighteous.

I have believed heretofore that the rights and duties, powers and prerogatives of any one state are the same, neither more nor less, than those of any other state, and this is so whether we compare two or more of the original Thirteen, or one of the older with one of the newer states. But in effect the argument of counsel for the railways is that this is not so. Missouri and Maine were admitted into the Union the same day by the same enactment. Maine has but its percentage of commerce into and out of the state, with no transstate business by reason of its geographical position, and has no large city. Missouri is a central state, with large cities, one of which is third in importance as a wholesale center, and second to but few as a manufacturing place. St. Louis and Kansas City are the gateways for both commerce and passengers, surpassed only by one, or possibly two other places. These facts are of tremendous importance to those who legislate either for the state or the nation. That legislation can be harmful to these great interests, any thoughtful person can readily see. But that these facts, important as they are, can be used to give a construction to or coloring of the Commerce Clause, I do not believe. In my opinion it is much the wiser to contend for the strength and power of the nation, by insisting also upon the rights and powers of the states as was intended they should have. For a third of a century it has been the recognized constitutional construction that the states have the power within defined limits to regulate charges by railways wholly within the state. And to now say that one state like Maine can regulate charges by a railway for transportation wholly within the state, and that Missouri cannot because flanked by two great rivers, and by a long time custom in fixing rates is to announce a rule not heretofore recognized, and in my opinion one entirely illogical.

348 It may or may not be true, that it would be for the better to have all the interstate railways of the country, doing both a state and an interstate business, under one supervising authority, such as a commission, regulating both classes of business. But under the Commerce Clause can this be done?

Employers' Liability cases, 207 U. S. 463.
Wabash R. R. v. U. S. (7th Circuit) — Fed. Rep. —.
9 Columbia Law Review 38.
U. S. v. Colorado &c., R. R. Co., 157 Fed. 321 (8th Circuit).

Difficult as these problems are, they can and will be solved, and for the right. Pessimists discourage. However, their statements that everything is wrong, and will grow worse, must be heavily discounted. Because railway systems reach into many states, and are units, crossing state lines arbitrarily fixed, a hopeless condition is not thereby brought about. It is not true as some say, that each state can lower the rates to confiscation, as all know who have read the decisions to any purpose. I believe as firmly as does anyone in the power and the rights of our general government, and when the clashings come as to the power of the state and the general government, let the doubts be solved in favor of the government. But as to some matters there are no doubts, and two of these are that the Constitution is the supreme law of the land, and that as to all local matters the states are in control. All should insist upon both.

4. It is contended that the statutes are void because of the excessive penalties, reliance being based on the case of Ex parte Young, (209 U. S. 123). Until the decisions in the Minnesota cases, (134 U. S. 418, and 467,) it was an open question whether a review of rates fixed by a legislature or a commission acting under a legislative authority, could be had by the courts. The Minnesota statute authorized a commission to fix certain rates, which rates thus fixed should be final and conclusive. The Supreme Court of the State adjudged that such rates were not merely advisory, nor prima facie reasonable, but conclusive, and not subject to review by the courts. (37 N. W. 782.) But the United States Supreme Court reversed that decision, and notwithstanding the strong dissenting opinion by Justice Bradley, concurred in by Judges Gray and Lamar, and Justice Miller hesitating, the question is now at rest, and the
349 courts not only can, but must, determine the question whether such rates are reasonable.

In time the Legislature of Minnesota believed it could in another way make its determination as to rates conclusive and beyond the powers of the courts to interfere. This was attempted by providing penalties for violations, to that which was equal for one week's business to life imprisonment for all officers and agents, and confiscation of all the railway property, if resistance by litigation was made, and such litigation failed. The decision in Ex parte Young followed, the Supreme Court failing to see the distinction between a statute providing that agents should become felons with life imprisonment pronounced, and all corporate property seized and confiscated, if an unsuccessful contest should be made in the courts.

The Statute of Missouri of April 15, 1905, covered by the original bills herein, fixes the only penalty for violations by allowing treble damages, and a reasonable attorney's fee. Citation of authorities need not be made to sustain such penalties. And in any event that statute has been repealed. The two cent passenger rate statute of February 27, 1907, provided for a penalty of not less than one hundred nor more than five hundred dollars. What shall be deemed a complete or separate offense is not defined. The freight rate statute of March 19, 1907, provides for no minimum penalty, but the *the* same shall be a fine not exceeding five thousand dollars. Im-

prisonment is not designated under either statute, unless by some general statute for the non-payment of the fine; while under the Minnesota statute the penalty for each offense was fixed at a fine of not more than five thousand dollars, or imprisonment in the State prison for not more than five years, or both.

This objection to the Missouri statutes is without merit.

5. Evidence is before the Court tending to show that a large number of men have been discharged from the service of the railroad companies by reason of the reduction of rates. And this fact is urged as one element that should be considered. It is true that before interest can be paid on the bonded debts, that operating
350 expenses, including labor, and materials, largely made up from labor, must be paid. And as of course all of these including interest must be paid before dividend checks are issued. The states should and usually do attempt to legislate in the interest of laboring men. And if the legislation under consideration is hostile to their interests, the legislature, and not the courts, have the responsibility. I agree to all that was said in argument in their behalf. I agree that in sobriety, and intelligence, and faithfulness to duty, they are surpassed by no other class of men. Their dangers are great, and the people owe them much. But if employés are reduced in number, or now or later on their compensation will be reduced, and if such results are by reason of legislation, then their remedy, if they have one, must be sought elsewhere than in the courts.

6. It is urged in argument that the reduction of rates will impair the service to the public. The charter of a railroad is an implied contract with the state. The company is given such right under such contract to perpetually operate its road. The state agrees that it shall be reasonably and sufficiently remunerated according to the business done. The company agrees to furnish reasonably efficient service. To furnish no service is a complete breach of the contract. To furnish a partial service is a partial breach. What is a reasonable service, is a question of fact dependent upon the circumstances of each case.

Thus it is that the Supreme Court has held that in some instances state legislation is valid which requires through and interstate trains to stop at important towns to let off and take on passengers, state and interstate.

Mississippi v. R. R. 203 U. S. 335.
L., S. & M. S. Ry. v. Ohio, 173 U. S. 285.
Gladson v. Minnesota, 166 U. S. 427.

And in other cases such state legislation has been declared invalid.

R. R. v. Illinois, 163 U. S. 142.
R. R. v. Illinois, 177 U. S. 514.
R. R. v. South Carolina &c, 207 U. S. 328.

All those cases turned on the facts, and the question of fact was as to the service the public should have.

351 Of course the service rendered and the compensation received should have a proper relation. The expenses incident

to, and that can be specifically located in connection with, a particular train, are not all the expenses to be accounted for, as will hereafter be discussed. But it is true that without reasonable compensation there cannot be reasonable service. It is common information that the public in many localities is demanding increased service.

But this phase of the question is so indefinitely covered by the evidence, and is so general in the very nature of the question that no decree can be rendered herein that will cover the proposition.

7. It is urged that these statutes are void because they are not enforceable as to some of the railway companies within the state, and the claim is, that being void as to some, they are void as to all. It is conceded in argument that as to two roads, the St. Louis & Hannibal, and the Kansas City, Clinton & Springfield, the rates fixed are not compensatory. The State's experts agree to this.

Usually statutes fixing rates for railroads to observe, classify the roads according to their earning power, and fix the highest rates for those earning the least. But this was not done, except that railroads of a length not greater than forty-five miles not owned nor leased nor controlled by a trunk line, may change four cents per mile per passenger.

The sole theory upon which rates are adjudged void can only be that the rates are not compensatory, and to so decree, the Court must have the complaint of each and every road making the claim. Complainants have recognized this by their counsel in bringing as many independent actions as there are railroads complaining. Whether there are any other railroads within the state than these eighteen complainants, neither the allegations of the pleadings nor the evidence show. Perhaps the Court should take judicial notice of whether there are other roads or not. Be this as it may, the Court is not advised. I assume there are no other roads within the state than these eighteen.

352 The record shows that two of the cases, those brought by the Rock Island, and the St. Louis, Kansas City & Colorado, have been consolidated for trial purposes, the one road having become the owner of the other since the litigation commenced. The record further shows that nine cases were tried, and that the other eight cases were to be covered by decrees the same as decrees in some of the cases tried, the particular cases being designated by the record. All this shows to my mind that complainants' counsel rightly conceived the theory upon which these bills of complaint were presented The record shows further that before the Master, there were many attempts for position on both sides as to what cases should be tried, the Attorney General and his associates desiring that the Burlington and two other strong roads having the short lines, should be heard, and the others either continued, or that decrees in the other cases should follow the decrees in the cases of the strong roads. Counsel for the railroad companies were desirous of trying the cases brought by some of the other companies, or at least that the roads should be classified into three or four classes, but that the Court should hear only one case of each class. This emphasizes the theory that was in counsels' minds all the way through this litigation.

In one respect at least it seems to me that these statutes should be declared valid or void as the facts may warrant, as has been frequently done with reference to ordinances of cities. The ordinances of cities regulating speed both for trains and teams are declared unreasonable, and therefore not enforceable as to some parts of the city, and valid and enforceable as to other parts of the city not so densely populated. These statutes are not void upon their face. The company which alleges that they are void must make a showing that the rates, considering all the facts and circumstances, are not compensatory as to that particular road, failing in which, the statute will be enforced, and successful in which, as to that particular road the statute will not be enforced.

The case of R. R. v. McKendree (203 U. S. 514) is not in point, because there the question was with reference to an order of the Secretary of Agriculture which was void in part and was not
353 separable, it not being possible to eliminate the valid from the void features.

The Cotting case (183 U. S. 79) was decided by reason of an entirely different principle. The statute in that case on its face shows that a company doing little business was not to be regulated, while the company doing much business was made subject to the statute. And by reason of that vice, the statute was held void. That the Cotting case is not in point, see:

St. Louis &c., v. Illinois, 185 U. S. 207.

McLean v. Arkansas, — U. S. — (January 4, 1909).

The Connolly case (184 U. S. 540) was likewise decided in part at least because the statute did not apply to all classes of persons engaged in a like business, and that the statute was not separable, the valid from the invalid.

The case of Ju Toy (189 U. S. 253), the Trade Mark cases (100 U. S. 82), and the recent case of Howard v. R. R. (28 Sup. Ct. Rep. 141), were decided by reason of this same principle, namely, as to whether the statute is separable or not.

Therefore the holding is that these statutes are not void upon their face, and cannot be declared void for the one reason that the evidence shows they are not enforceable as to two or more roads.

8. The state earnings are made known to a certainty, concerning which the experts on both sides agree. And whether in earning them the company gains a profit, or sustains a loss, is dependent upon the expense in making such earnings. Some of these expenses can be definitely specified, but others, like maintenance of way, salaries of all officers including ticket agents, handlers of freight, terminal expenses, compensation of many laborers, and other things, are all occasioned for carrying both freights and passengers, state and interstate, and miscellaneous of each. And herein is the problem how to make the apportionment.

The track mile, or train or car mile does not furnish the solution, because everyone agrees that neither of those methods will do, and no one of the experts or counsel on either side asks for such a solu-

tion. Therefore there is and can be but one of two methods
354 adopted. Neither can be relied upon if mathematical precision is demanded. But the one more nearly correct and satisfactory, is the one to be adopted. And that is what is done in litigation concerning injuries and death; the age, earning power, loss of time, can be fixed, some with certainty. How many years the party had before him is fixed by mortality tables, wholly unreliable as to the individual, but fairly certain as to the average.

In taking property under the power of eminent domain, we know the assessed value, the amount of taxes, the rents, and maintenance. Some or all these elements are put in evidence, while all other is matter of opinion, concerning which witnesses and jurors differ. And so it is in most litigation.

9. The theory to now recognize must be either the proportion of earnings, state and interstate, or ton and passenger mile.

That it costs more to carry either freight or passengers proportionately for a short than a long haul, is undoubtedly true, although all the elements are not more expensive. Local trains generally have poorer and older and cheaper cars and locomotives. But their speed is greater between stations. There are many stops. They carry proportionately much greater dead weight. They do much switching, and there are many delays. Their crews are paid more proportionately to distance and what is carried. The trains are daylight trains only. With freight the carload and number of cars are much the less, and from station to station grows less, and is largely made up of single parcels, boxes, and individual shipments from as many consignors to as many consignees, first put in one station, and at the end of the trip into another station by the company. Usually there are two terminals, comprising an enormous amount of the investments and expenses of the company. The local train is seldom loaded to the capacity of the engine, to the loss of much of the investment and expense. The clerk hire, selling tickets, issuing bills of lading, making expense accounts, and auditing and making records, are attended with like expense for the small and the large items. Many stations would be done away with but for local business.

355 In nearly every instance enumerated, as to the interstate, which includes trans-state, the reverse is true, although much magnified in my opinion as to terminals and particularly as to trans-state, because in my judgment some of the interstate business has two terminal expenses within the state. The two gateways in Missouri through the one or the other of which a large percentage of business both interstate and trans-state passes, are Kansas City and St. Louis. And at both of those places the investments are very large, and of course whether owned or rented, the expense is practically the same. But these terminals are for both. And while I believe the terminal expenses at St. Joseph, Kansas City and St. Louis as to trans-state business is minimized, I do not agree with the experts who claimed that there are none of those expenses. Their cross examination shows this to be a mistake.

But from the great weight of the testimony, it can well be said

that the ton mile is not reliable, and the revenue is more nearly correct, as showing that it costs more by twenty-five per cent. to carry passengers, and fifty per cent. to carry freight locally than it does when interstate. Generally speaking this is undoubtedly true. There are exceptions, one of which is shown by the Burlington with its three roads from St. Joseph, the one to Villisca, Iowa, another to Creston, Iowa, and a third to Chariton, Iowa. They are all interstate roads, each with two terminals, but each operating only local and daylight trains. The Wabash illustrates this with roads across the arbitrary state line between Missouri and Iowa. And there are other illustrations, but less noticeable, in the testimony.

But all these are exceptions and the testimony establishes the rule as stated.

The Missouri Legislature has recognized the proposition in all of its rate statutes, and particularly in the statutes now assailed, that it costs more per mile for a short than a long haul.

See Act approved April 14, 1905; and the Act of April 15, 1905, covered by the original bills herein. The passenger rate statute under consideration fixes a two cent fare for all trunk lines, and four cents per mile for a road less than forty five miles in length.

The freight rate statute under consideration, in every schedule recognizes the principle that proportionately there should be
356 more charged for a short than a long haul. For instance, Class D allows a charge of five cents per hundred for carload lots for the first twenty-five miles, and one-half cent for the second and additional twenty-five miles.

And commencing with the statute of Pennsylvania of 1846 chartering the Pennsylvania road, to the present time, every statute upon the subject fixing freight rates, and many of them fixing passenger fares, recognizes this principle. So that while it is a legislative function to fix rates, we have innumerable legislative recognitions of the greater cost for weight per mile for a shorter than a longer haul, and in some instances as to passengers. And no state has so recognized this to a greater extent than has the Missouri Legislature.

And the courts passing upon the question, have invariably recognized this as being so, and that the revenue theory is the correct one as against the ton mile.

This was so recognized by the Supreme Court of Pennsylvania in case of Railroad v. Pennsylvania County, 68 Atl. Rep. 677, but not discussed.

In R. R. Co. v. Tomkins, 90 Fed. 363, Judge Carland, of the South Dakota District, in passing on the statutes of that state, said:

"This Court believes that it is fair and just to first ascertain what per cent. of the total gross earnings in any one year the total local earnings are for that year, and having ascertained that per cent to take the same per cent. of the total value of the property as a fair value upon which to fix local earnings."

The decree was reversed, and although an equity case, remanded because of a failure to make a material finding. (176 U. S. 167.) The same case under the title of R. R. Co. v. Smith, 110 Fed. 473, on final hearing resulted in a decree enjoining the rates, and the

question of expenses was arrived at by the extra cost and on the revenue theory.

357 The case of R. R. Co. v. Keyes, 91 Fed. 77, is an opinion by District Judge Amidon, concurred in by Circuit Judge Thayer, enjoining North Dakota statutory rates. The argument of the opinion condemns the ton mile theory, and adopts the revenue theory. The criticism of the case is, that conditions in sparsely settled North Dakota are not like those in this state. But the question of which theory was the more accurate for computation, was fully covered, and the ton mile was condemned.

In re Arkansas R. R. Cases, (163 Fed. 141,) decided but a few months since by Judge Van Devanter of this Circuit, a temporary injunction was issued against the enforcement of the Arkansas statutory freight and two cent passenger rates. And in most respects the State of Arkansas with reference to rates is like that of Missouri, especially the south half of Missouri, Judge Van Devanter in discussing this question, said:

"Other standards are suggested, but the proofs indicate that none of them is as satisfactory or accurate as is the difference in cost in its relation to the revenue."

And the proofs, including statistics and tables and some of the same expert witnesses on each side, were the same as in the cases at bar.

The great case from Nebraska of Smyth v. Ames was heard on the Circuit by Justice Brewer on oral testimony, as the cases at bar have been heard. The entire discussion of the question by Justice Brewer in a lengthy opinion is on the extra cost and revenue theory, entirely iignoring the ton mile theory. That case resulted in the state statutory *freights* being enjoined by Justice Brewer, District Judge Dundy concurring.

The case was carried to the Supreme Court, (169 U. S. 467), resulting in an affirmance of Justice Brewer's decree. The opinion of the Supreme Court by Justice Harlan is exhaustive, and the tables used by him to show the facts, and the entire argument is with reference to the extra cost and revenue theory, utterly ignoring the ton mile theory.

358 Recurring to the Tomkins case, (90 Fed. 363,) above alluded to, that case was reversed by the Supreme Court, (176 U. S. 167,) and the question of fact was only discussed from the revenue theory. The reversal was only because the lower court recited that it was unable to ascertain what was the actual cost of earning the local earnings for certain years. But as the lower court on the first hearing proceeded on the extra cost and revenue theory, and as that was what was discussed by the Supreme Court, and under the Mandate the case went to decree (110 Fed. 447,) on the revenue theory, I am convinced that the Supreme Court for the guidance of trial courts has adopted the revenue theory as the one more just and equitable to the patrons of the road and to the companies.

So that we have the Supreme Court in the two cases recognizing the revenue theory. Two Circuit Judges of this Circuit have so

held. And the same holdings have been made by at least three District Judges, and the Supreme Court of Pennsylvania impliedly, although the argument in that opinion is not strengthened by reason of a statement as to the measure of proof, concerning which the minority opinions without doubt are correct.

As an argument against the revenue theory, and for the ton mile theory, no court has spoken in so far as counsel on both sides and I are advised. In some phases this is a question of fact, or logic, or argument, or opinion, partaking of all. But so many eminent courts have thus spoken, even though not a question of law, and even though the traffic in the states differ, yet such opinions tend most strongly to create an undoubted belief that the cost for carrying both passengers and freight locally is greater proportionately than for doing a long or interstate business, and that the revenue theory is the only one to apportion the cost of each business.

The Wisconsin Railroad Commission made an exhaustive and thorough investigation of these questions two years since. Evidence of both sides was heard. Experts interested, and those not interested, testified. Many months of time were given to the hearing and in reaching conclusions. A valued report was the result. The findings and conclusions were:

359 1. The cost of carrying local and state freight is greater than for carrying interstate freight and passengers.

2. That this extra cost must be considered, and then take the gross earnings as the basis upon which to allot expenses between the state and interstate business.

3. That less than two and one half cents per mile for local or state passengers was not remunerative in the State of Wisconsin.

10. When the statutes in question were enacted, it was believed by many that by reducing the fare, there would be much more travel. For a month or so this proved to be true. But with the novelty gone, the testimony shows that the increase has been less than three per cent and more nearly one per cent.

It was likewise believed by many that with the abolition of passes and other forms of free transportation, that expenses would be lessened and receipts increased. Ministers sometimes received free transportation, but generally at half rates. Many lawyers and doctors received passes under guise of retainers for services never performed. Bankers received them under the claim that it was compensation for signing bonds, and cashing Chicago and St. Louis exchange. Politicians demanded, extorted, and received them for supposed influence. Officials received them as a courtesy. Many newspaper concerns received them, from the proprietor and editor-in-chief down to the typesetter, (relatively included,) under the pretense that it was an exercise of liberty of contract, for which the newspaper published the arrival and departure of trains, with an occasional local and sometimes abbreviated plate matter. To receive them was often followed by charges of corruption; and to refuse them, by charges of demagogy. Every person conceded it to be a wrong system, and most people were advocates for its abolition, except as to the class to which he belonged. But it was abolished,

and does not longer exist, and the evidence shows that as to state earnings, the passenger revenue is increased by reason thereof less than one per cent.

11. This leaves but one question for decision, and that question largely one of fact. The question is whether the traffic wholly within the State of Missouri generally referred to in the evi-
360 dence as local traffic, can be carried under the freight rate statute of 1907 and the passenger fare statute of 1907 at such profit as will give a reasonable return after paying expenses upon the investment, or whether such traffic is carried at a loss or less than such reasonable profit.

Thousands of pages of testimony, taking weeks of time, have been filed. This testimony was orally presented, part to the Master, and part to the Court, accompanied with volumes of statements, reports, schedules and tables. Every phase of every question of both debit and credit has been worked out, tabulated, and filed. These exhibits are the result of something like one year of work by the expert accountants representing both sides, as a result of their examinations of train reports, waybills, auditors' books, and of the accounts of the passenger and traffic departments of the several roads. This work required not only much time, but energy, and patience, and learning, and great skill. But each side had accountants of the highest character, and possessing all of those qualifications. The four accountants, Mr. Peabody and Mr. Johnson representing the railway companies, and Mr. Taliaferro and Mr. Hamilton representing the State, impressed me after hearing them testify and being in consultation with them for ten days after the cases were submitted, that the sole purpose of their work was to exhibit the truth, differing only as to extra cost and that difference of extra cost largely confined to the local passenger traffic, and differing as to the theory as to how the expenses between local and interstate traffic within the state should be divided. Aside from those two questions there is not the slightest variance between the testimony of the experts upon the two sides. During the ten days following the submission of the cases, they and the Court being alone, at the request of the Court they prepared a statement in each of the nine cases submitted, which have been ordered filed. To each of the nine statements is appended a certificate showing the time covered, and that such statement correctly shows the results of the various assumptions set forth therein, which certificates were signed by the four expert accountants. Seldom, if ever, is a Court under greater obligations to expert accountants representing the two sides, than the Court and all parties, the railroads and the public, owe
361 these four gentlemen. Usually experts representing different sides do not agree to anything. Here experts representing the different sides agree to everything pertaining to the accounting, the differences only arising as to the basis.

The Court is likewise much indebted to counsel on both sides, who for four days argued these cases with a fairness, and wealth of learning, and eloquence seldom displayed at the bar. And now after the fullest investigation of the record, the Court has reached

the conclusion that upon this question of fact the statutory rates fixed by either and both statutes are not remunerative. And it only remains for the Court to give the reasons for such conclusion.

And in giving these reasons, clearness is added by eliminating those things so clearly established by the evidence, or so nearly conceded in matters of law as not to be debatable.

1st. The unquestioned and undoubted rule is that there is a presumption both of fact and of law in favor of the validity of every legislative enactment. The railway companies have the burden of removing this presumption, and showing that the statute clearly, or as some Courts say, palpably, and others say, beyond a reasonable doubt, that the statute is invalid. In these cases the Court has recognized this rule. The authorities upon this question form a long and unbroken line, with the single exception of the majority opinion in the Pennsylvania case decided a year ago. (68 Atl. Rep. 676.) And that one authority is not persuasive.

2nd. All testimony and argument bearing upon the question as to what consideration the Legislature of Missouri gave to these enactments, is utterly immaterial. Much was said in argument as to the message of Governor Hughes of New York two years ago in declining to approve the two cent fare statute of that state. Governor Hughes had the moral courage to veto a measure of popular favor because as he believed the question had not been fully considered. But the relations of a governor to proposed legislation and those of a Court to legislation consummated, are entirely different.

362 3rd. Most of laymen and many lawyers believe that the question is whether the railway company as a system is earning sufficient revenue upon the value of the property of the system. They believe that if the Burlington, Santa Fe, Wabash, or any other railroad system is earning such money as will pay all charges and expenses including taxes and interest, with reasonable dividends to the stockholders, that state rates for state business must stand. Of course no one believes this who has given the slightest attention to the question. That precise question was before, and was decided by Justice Brewer, (64 Fed. Rep. 165), and affirmed by the Supreme Court in the Nebraska case of Smyth v. Ames (169 U. S. 466). The only question is as to Missouri rates, less expenses properly charged against the same. And if this balance does not leave sufficient to pay a reasonable return, the law is invalid. And if the railroad system of any company is earning more than a reasonable return by reason of interstate rates, which affect the people many times more than local rates, and if such interstate rates are too high, Congress either acting alone or through a Commission must make the corrections.

The Supreme Court during the present year in the case of City of New York v. Consolidated Gas Company of New York (211 U. S. —) decided that six per cent. was fair and right to be given to the owners upon the true valuation. My opinion is that while a gas plant is in some respects different from a railroad, that a railroad property, properly built, and properly managed, should over and above expenses make a return of six per cent. per annum. And con-

sidering all the evidence, the evidence fairly shows that all of these roads were properly and economically built and are being properly and economically managed, and that after paying the expenses for maintenance and operation, that there is less than six per cent. of returns, and not more than three per cent. upon any of them and as to some of them a deficit, taking the property as above stated within the State of Missouri at its fair valuation. And this is so without reference to bonds, because in no case do the bonds bear six per cent. interest. But taking the bonds into consideration, there is still not to exceed three per cent. returns, and many cases a deficit after considering all debits and credits, upon the true valuation for the state business. There is no evidence that any of the existing
363 bonds were improperly issued either as to amounts or rates of interest. In fixing the value of the Court has considered the evidence of witnesses as to the stocks and bonds outstanding, and the Court has considered the evidence of the fact that the Missouri State Board for taxing purposes has valued these properties. Of course those findings are not binding nor conclusive, but they are persuasive. But independently of stocks and bonds, and independently of what the State Board has valued these properties for taxing purposes, the evidence shows the valuations to be as recited in the findings of fact herewith filed, and to which reference will be made in the decrees.

It is absolutely necessary that many trains both passenger and freight do both a local and interstate business. Even the fast trains stopping at but few stations in the state carry state passengers between such stations. And the same is true as to freight trains carrying freight both in carload and less than carload lots.

The valuation of the roads has been fixed by the Court as shown by the findings of fact. The entire state and interstate earnings of each of the roads within the state is known and fixed to a certainty. The expenses are known and fixed. To apportion these expenses, must be done according to one of the two theories, and the correct theory is that according to revenue. One theory or other must be applied to both freight and passenger expenses, and the Court should not adopt the one theory as to part, and the other theory as to another. The one theory is helpful to the one side, and the other theory helpful to the other side, the one theory to the one side in freight, and the other theory to the other side in passenger. But an arbitrary splitting of theories is illogical and unfair, and cannot be recognized. The court has adopted the revenue theory because a great number of the best railroad experts of the country, against a very limited number to the contrary have so testified. Every Court that has ever had this question before it in so far as I am advised by the briefs of counsel and my own independent investigation has so held in the cases hereinbefore cited of the Supreme Court of the United States; in the two cases, by two Circuit Judges of this Circuit; by three District Judges of this Circuit, and by the Supreme Court of Florida, State v. Atlantic Coast Line, 37 So. Rep. 657.) And Beale &
364 Wyman on Railroad Rates Regulation, Sec. 466, announces such as being the correct rule. The values of the property

within the state have been fixed by the Court. The entire earnings within the state, interstate and state, freight, passenger, and miscellaneous of each, have been fixed. The entire expense is known, including the extra cost of each. To ascertain whether the result is a profit, and if so what per cent., or a loss, is but a problem of primary arithmetic, as is shown by Judge Van Devanter in Arkansas Rate Cases, (163 Fed. Rep. 141). There are other methods equally simple, the resultant figures of course being the same. These computations show as to the commodities covered by the freight rate status of 1907, that two roads, the Hannibal & St. Louis, and the Burlington, allowing nothing for extra cost, there is a deficit, and with all other companies less than two per cent. But with the extra cost added, the deficit for the two companies is much greater, and the other companies show a deficit.

The passenger earnings under the two cent fare law of 1907, allowing nothing for extra cost over interstate business, give no return whatever to the Rock Island, St. Louis & Hannibal, Kansas City, Clinton & Springfield, and the Great Western. The other companies will have the following: The St. Louis & San Francisco between three and four per cent.; the Santa Fe between four and five per cent; the Kansas City Southern a small fraction over two per cent; the M. K. & T. between two and three per cent.; the Burlington between three and four per cent. But all this is arrived at by allowing no extra cost of service. But to add the extra cost for freight and passenger, there are no earnings over expenses. This is confiscation under the Constitution.

It being a legislative act, and not a judicial one, this Court cannot fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the State employed in these cases, or through a Commission with like assistance.

In view of General Equity Rules prohibiting findings of fact, and other matters from being inserted in decrees, this opinion has been extended. And to further show how the court has considered the cases, and the various questions of fact covered by the volumi-
365 nous evidence, findings of fact have been made and signed, which will accompany this opinion.

Long and laborious as the work for the Court has been, I am of the opinion that the cases have been expedited by hearing the oral testimony as provided by General Equity Rule 67. It gave the Court a much better insight into the intricacies of the cases, and with a much better knowledge of the cases than could be gained by hearing exceptions to a Master's report. And I am fully compensated by the belief that I have worked out the correct conclusions, and with the knowledge that if I am in error, either as to fact or law, that the cases can be speedily heard de novo by the Supreme Court of the United States. Because I feel in all cases, and in these cases more than ever before, as Judge Sanborn said in Boatmen's Bank v. Fritzlen, (135 Fed. Rep. 650, 655);

"Every conscientious judge, every thoughtful man, upon whom is laid the grave responsibility and the heavy burden of determining

the rights of his fellows, rejoices in the thought, wherever such is the case, that his decision may be reviewed, and that, if erroneous, it will not work irreparable injustice to him whom he deems it his duty to defeat."

The decrees will be for the complainants. Each party will pay the costs by such party made, except the compensation of the Master and stenographer. The half of those will be paid by complainants, and the other half by respondents. The reservation clause usual in such cases will be in the decrees.

Kansas City, Missouri, March 8th, 1909.

366 Afterwards, to wit, on the 17th day of April, 1909, a Supplemental Opinion was filed. Said Opinion is in words and figures as follows:

In the Circuit Court of the United States Western District of Missouri, Western Division.

No. 2988. Equity.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY, Complainant,
vs.
HERBERT S. HADLEY, et al., Respondents.

And Equity Cases Nos. 2989, 2990, 2991, 2992, 2993, 2994, 2995, 2996, 2997, 2998, 2999, 3000, 3001, 3002, 3003, 3004, 3006.

Supplemental Opinion.

SMITH MCPHERSON, *Judge:*

These cases are pending on a motion to modify the decrees and opinion filed March 8th, 1909.

1. The costs were taxed, the one-half to the railway companies, and the one-half to the state officers. The company being successful, it is contended that the taxable costs aggregating about eighteen thousand dollars should all be adjudged against the state officers.

In actions at law, in the absence of a tender or statutory offer to confess judgment, the costs follow the judgment. In equity cases such is the general rule, but not the invariable one. The award as to costs is discretionary.

Two things influenced the court in dividing the costs herein.

First. Defendants are officials, and as officials are representatives. They have no personal interest in the litigation. This of itself is not enough to avoid the costs, but it is to be considered. It will be presumed that the legislature will appropriate a sufficient amount to protect these officers. But this is not always done. The last legislature appropriated $40,000.00 for these cases, which was but two-thirds enough for the two years. The Master in Chancery and the lady stenographer gave a great deal of time, followed by very large, but justly owing bills, the one-half of which has been paid by the rail-

ways, and by the state nothing with the appropriation ex-
367 hausted. Whether the other half is paid all depends upon what the legislature does.

Second. The more sufficient reason for dividing the costs is because of the extravagantly enormous record made in the cases. The Master gave many weeks to taking evidence, and many more weeks were given by the court in taking evidence. Both the Master and the Court were powerless to abbreviate the record, because the Supreme Court in the case of Blease vs. Garlington, 92 U. S. 1, and the Circuit Court of Appeals for this Circuit in case of Schubert vs. Woodward, 167 Fed Rep. —, 52, have held that Trial Courts must receive in equity cases, all evidence offered that is germane to the issues. I complained, and in effect gave warning many times to the parties, but without avail, because of the prolixity of the record. Something like 15,000 pages of evidence were taken, when one-third would have been as strong a presentation of either side. Courts should impose penalties for this, and the only penalty is by way of costs. Both sides were at fault, and both sides should bear the burden. It does not follow that such a precedent will be one to plague. It is not a precedent to be followed except in cases where it ought to be followed.

2. Complaint is made because of the recital in my opinion that, "It being a legislative act, and not a judicial one, this court cannot fix rates. If it could, two and one-half cent passenger rates would be fixed for the stronger roads, and three for the others. But that is for the legislature acting itself with experts, such as the state employed in these cases, or through a commission with like assistance.

My statement that "It being a legislative act, and not a judicial one, this court cannot fix rates," is not controverted by anyone. This being so, as of course, what I said as above is obiter dictum. But because it is dictum, is no reason whatever for not saying it, and still less a reason for now eliminating it from my opinion. The greater part of one of the greatest opinions ever written by the great Chief Justice (Marbury vs. Madison), was dictum. But even if it were possible, who would dare to mutilate that opinion? But
368 two years since there were published two very large volumes wholly covering dictum only of the United States Supreme Court. Those dicta were and are binding on no one, but they contain much of the cream of our jurisprudence. This dictum of mine is binding on no one. It is my opinion, and will stand as of value, or of no value as the profession and informed laymen fix the value thereon. I believes it proper to say that the strong roads should have two and one-half cents per passenger per mile, and the weaker roads three cents. I could have fairly stated that the St. Louis and Hannibal, and the Kansas City, Clinton & Springfield Railroads should have four cents or more per passenger mile.

I still adhere to these views, and entertaining them, I know of no reason for not stating them, with reasons for believing it was my duty to state them. Passengers, like consumers, have rights. One of those rights is to have fares fixed reasonably low. But the term reasonable is a comparative one. It must be in proportion to what it is worth,

and the better the service, the more it is worth. And the public is entitled to have, with the right to demand, efficient service, provided always such is paid for. Much in argument was said by counsel on both sides as if an arbitrary flat rate is all that is involved, regardless of service and regardless of all other things. Whether the trains are expensive or inexpensive, daylight or night trains, through or local trains, main line or branch trains, roads through the hills of central Missouri, or the Ozarks or over the prairies, and whether the trains carry few or many passengers, are matters largely passed over as if of no importance. To me they seem of great importance. So it is as to the greatly increased cost of materials compared with ten years ago. The average fare paid per year, aside from the low excursion rates, is less than six dollars per year, commercial travelers excepted. To reduce that to four dollars, thereby saving two dollars, is of course of importance. So are other matters of importance. Aside from having efficient service to be paid for at remunerative rates, the laboring men, the employés, have rights. They have the right to be well paid for their work, in day time and night time, sunshine and storm, during the excessive heat of the summer and the rigors of winter.

369 Their hazardous and most dangerous service entitles them to remunerative compensation, which they cannot have with meagre earnings of the roads. Evidences of humanity and kindly feeling for their fellow men need not be wholly displayed toward the man who pay- six dollars per year for passenger fares. A kindlier disposition would suggest an equitable division of sympathy. Thousands and thousands of them have already been "let out" because of decreased earnings, and more are to follow, with diminished compensation for those from necessity retained. What is the truthful answer to make these men, and who is to make this answer? It is doubtful if the legislature thought this out. I decline to modify my opinion as respects this.

3. It is contended that the court was in error in its original opinion in that the penalties of the statutes render them void.

Whether rates prescribed by statute are valid or invalid, is a judicial question, and the legislature cannot prohibit the courts from passing thereon. This was so stated in the Minnesota Milk case, 134 U. S. And this cannot be done indirectly, by imposing such penalties as to terrorize the company, its officers and agents so that they do not dare to litigate the question. This was so held in ex parte Young but a year ago.

This question received but little attention from any of the counsel or the court, and was but briefly discussed by the court in the opinion.

In the Consolidated Gas case in 146 Fed. Rep., 150, Circuit Judge Lacombe held that a penalty of $1,000.00 for each charge for gas in excess of the statutory or commission rate was prohibitive and a denial of the right to go into the courts. And on the final hearing of the same case in 157 Fed. Rep., 849, 881, a like holding is made. And in the same case on appeal, the Supreme Court held a year ago that the penalties were so excessive as to be void.

The discussion by Justice Brewer speaking for the court, in the case of Cotting vs. Kansas City Stock Yards, 183 U. S., 79, 99, is to

the same effect, although the question was not decided. And a like discussion, with a like putting the question aside without a decision, is found in the Reagon case in 154 U. S.

370 And in the ex parte Young case, although the penalties were more severe than under the Missouri statutes, the question is at rest. The sole question is—Can a party be allowed to litigate a disputed question of fact as to property rights, without confiscation of all its property, and all of its agents being sent to jail, if the case is lost? Surely he can. Upon reflection and with much additional consideration, the holding now is that the section imposing penalties is void.

But this is largely an academic question, for the reason that the penalty section is easily separated from the main features of the statute. And I need not discuss the proposition that when separable, the void section does not render the entire statute void.

4. These cases as to freight were brought four years ago. Two years ago supplemental bills were filed, bringing forward the new freight rate statute, and the passenger rate statute. Upon a hearing by agreement of counsel on both sides, a temporary injunction was issued against the enforcement of the freight rate statute. The railways asked for a temporary injunction against the enforcement of the passenger rate statute. The Attorney General and his associates contested this, and were successful to the extent that the court ordered an observance of the statute for some months, until information from actual tests could be made. So that from the very inception of the case, it has been contended on the one side that the statute is invalid, and on the other side that the statute is valid. It therefor follows that this court has had jurisdiction for four years over all the parties, and over the entire subject matter of state earnings.

It is clear that this court having such jurisdiction should retain it over all the parties, and the subject matter, to the end that the decrees hereafter may be enlarged, or modified, as varying circumstances and the acts of the parties may require. Therefore the decrees should be so changed as to recite such reservations.

Kansas City, Missouri, April 17th, 1909.

371 UNITED STATES OF AMERICA, *sct:*

I, Adelaide Utter, Clerk of the Circuit Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignments of errors and all proceedings in the cause wherein The Kansas City Southern Railway Company is complainant and John A. Knott, et al., are defendants, on the appeal of the defendants and the cross-appeal of the complainant as required by the stipulation of parties on file in said cause, and set out on pages 322 and 323 supra.

Witness my hand as clerk and the seal of said Court.

Done at office in Kansas City, Missouri, this first day of May, A. D. 1911.

[Seal Circuit Court of the United States for the Western Division of the Western District of Missouri.]

ADELAIDE UTTER, *Clerk.*

Endorsed on cover: File No. 22,758. W. Missouri C. C. U. S. Term No. 682. John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri, appellants vs. The Kansas City Southern Railway Company. File No. 22,759. Term No. 683. The Kansas City Southern Railway Company, appellant, vs. John A. Knott, H. R. Oglesby and Frank A. Wightman, Railroad and Warehouse Commissioners, and Elliott W. Major, Attorney General of the State of Missouri. Filed June 26, 1911. File Nos. 22,758, and 22,759.